TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915

No. 65

TEODORA ARANA DE VILLANUEVA, APPELLANT,

vs.

MARIANO P. VILLANUEVA.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED FEBRUARY 4, 1914.

(24,044)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 352.

TEODORA ARANA DE VILLANUEVA, APPELLANT,

vs.

MARIANO P. VILLANUEVA.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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1 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

PHILIPPINE ISLANDS,
City of Manila, ss:

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the following is a true transcript and translation of certain proceedings had in the Court of First Instance of Albay and in the Supreme Court of these Islands in case numbered 1291 in the trial court and bearing No. 7314 on the docket of the Supreme Court.

——— ———.

Summons.

THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of Albay, 8th Judicial District.

Civil No. 1291.

TEODORA ARANA DE VILLANUEVA, Plaintiff,
versus
MARIANO P. VILLANUEVA, Defendant.

For Divorce.

On the third day of August, 1910, the defendant was duly summoned in the above case by the sheriff of the Province of Albay, through his deputy in the municipality of Tabaco.

2 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Albay, Eighth Judicial District.

Civil No. 1291.

TEODORA ARANA DE VILLANUEVA, Plaintiff,
versus
MARIANO P. VILLANUEVA, Defendant.

For Divorce.

On the 17th of October, 1910, the plaintiff, after having first served a copy on the attorneys for the adverse party, filed the following

Amended Complaint.

Now comes the above-named plaintiff, through the undersigned attorneys, and amends her complaint, alleging the following causes of action against the defendant:

1.

That both plaintiff and defendant are of legal age and reside in the municipality of Tabaco, Province of Albay, Philippine Islands.

2.

That the plaintiff and defendant were married in Legaspi, Province of Albay, on the 11th day of July, 1867, and since that time have been man and wife. (See Exhibits "A," "B" and "C" attached to the original complaint and which form an integral part of this allegation.) From this union they have had the following children: Pedro Villanueva, Francisca Villanueva, married to Santiago
3 Riosa, María Villanueva, married to Ignacio Liamko, Rafael Villanueva, Delfin Villanueva, Cándida Villanueva, married to Ramón Morales, Isidora Villanueva, Mariano Villanueva and Vicente Villanueva, all of whom are at the present time of legal age and residing in the Province of Albay. They also had one other child, Antonio Villanueva, who died leaving two minor children living in Barcelona, Spain.

3.

That the plaintiff has been informed, and so believes and alleges, that her husband, the defendant, has committed various acts of adultery with Florencia Quijano; that said adulterous acts took place in various towns of this province of Albay, especially in Legaspi and Tabaco, since the year 1868, and have continued and still continue up to the present time; that in consequence of said illicit relations of defendant with the said Florencia Quijano, several children were born, most of whom are now living and notoriously and publicly hold themselves out as children of the defendant, with his knowledge and by his authority. Said children are named Melania, Felix, Toribia and Julio, all surnamed Quijano, but they are known to the public under the surname of Villanueva and they themselves use the name of Villanueva when signing, and in official documents.

4.

That the plaintiff has been informed, and so believes and alleges, that the defendant, in or about the year- 1889 and 1890, and for some time thereafter, committed various acts of adultery with Vicenta Buenaflor, in the town of Tabaco, Province of Albay, from which illicit relations there was born a daughter named Mariá, who since the year 1902 publicly holds herself out as a daughter of the defendant and bears his name, all by his authority and with his consent.

5.

That the plaintiff has been informed and so believes and
4 alleges, that in or about the year 1891, and on subsequent dates, the defendant committed various adulterous acts with Asunción Caña in the town of Tabaco and other towns of the Province of Albay, from which illicit relations the said defendant had a son which died at the age of seven years.

6.

That the plaintiff has been informed, and so believes and alleges, that the defendant has committed various adulterous acts with Quiteria Buenconsejo; that the said adulterous acts took place in the town of Tabaco, Province of Albay, since the year 1892, and the plaintiff believes and so alleges, that they continue up to the present time; that as a result of the said illicit relations, the defendant and the said Quiteria Buenconsejo have had four children, named Maxima, Fortunato, Balbino and a female child of tender years whose name the plaintiff does not know; that the said children, with the consent and by authority of the defendant, publicly and notoriously hold themselves out as children of the said defendant and use his name.

7.

That the plaintiff has been informed and so believes and alleges, that in or about the years 1901 and 1902, the defendant committed various acts of adultery in the municipality of Tabaco, Province of
5 Albay, with Eugenia Guerrero, a resident of the Barrio of San Carlos of the said municipality of Tabaco.

8.

That the defendant has also been informed and so believes and alleges, that in or about the years 1903 and 1904, the defendant committed various adulterous acts in the municipality of Tabaco with a woman living in the barrio of San Lorenzo of the said municipality of Tabaco, named Maria, whose surname is unknown to the plaintiff.

9.

That since the year 1902, and by reason of the repeated adulterous acts of the defendant had with all and each of the persons abovementioned, the plaintiff left his house and since that time has absolutely refrained from living with the defendant.

10.

That all and each of the facts set out in the preceding paragraphs of this complaint are publicly known, and the defendant has committed all and each of the adulterous acts above stated with public scandal and with contempt for the dignity of the plaintiff.

11.

That the defendant at the present time possesses realty, goods and chattels, cattle, cash and other property, whose value amounts
6 to a considerable sum, calculated at three hundred thousand (300,000) pesos, all of which is under the administration and absolute control of the defendant, for which reason they can not even be described. That the plaintiff is interested in and is co-owner of all the said property, by reason of it having been acquired subsequent to the date of the marriage of the plaintiff to the defendant and consequently having the character of bienes gananciales.

12.

That the approximate value of the income from said property exceeds the sum of eighteen thousand (18,000) pesos, Philippine currency.

13.

That the plaintiff has been informed, and so believes and alleges, that the defendant has made valuable gifts and has conveyed cash, goods and real estate to his illegitimate children, some of which donations have been registered in the Registry of Deeds; and the plaintiff believes and so alleges that such transfers and donations were made without legitimate reason and with the sole purpose of injuring the plaintiff and the legitimate children of the defendant.

14.

That the plaintiff has been informed and so believes, and alleges, that the defendant has executed a note for a considerable sum,
7 amounting to P20,000 or more, in favor of one José Salcedo, of Tabaco, the husband of the said Melania Quijano, one of the illegitimate daughters of the defendant, and according to the information and true belief of the plaintiff, the said note was given without legal cause and also with the deliberate purpose of injuring the plaintiff and to lessen the hereditary portion that will in time accrue to the plaintiff and to her legitimate children.

15.

That the defendant has absolutely deprived the plaintiff of all intervention or participation in all business affecting their conjugal partnership property and has recently taken from some of his legitimate children the administration of certain of his properties in order to bestow it upon his illegitimate sons, and he is performing acts which reveal a positive intent to prejudice the interests of the former and to favor the latter.

16.

That, by virtue of the facts alleged in paragraphs 13, 14 and 15 of this complaint, the plaintiff alleges that the conjugal property is

in danger of being lost and of disappearing, unless it be placed in the hands of a receiver appointed by the Court during the pendency of these proceedings.

17.

That the plaintiff believes and so alleges, that the defendant intends to continue to give and dispose of property to his illegitimate children, or to other intermediaries, for the purpose of injuring the plaintiff and his legitimate children, unless he be restrained by a special order of the Court.

18.

That the plaintiff has been informed and so believes and alleges that the defendant has fraudulently alienated and conveyed property and money to others of his illegitimate children and to other intermediaries, all for the purpose of prejudicing the plaintiff; that he will continue to so alienate and transfer it unless he be restrained by a special order of the Court.

19.

That since the time when the plaintiff abandoned her house and ceased to live with the defendant, she has not received any money from him for her maintenance and expenses; during that time she has been living with one or another of the children born of her marriage with the defendant, and the plaintiff is without resources to meet even the most necessary living expenses; that at the present time she is sick and is without means to pay for medical attention.

20.

That in or about the month of July, 1910, and at various times subsequent to the filing of the original complaint of record, by reason of her sickness, the plaintiff has had recourse to the professional services of Mr. Gabino Limkako, of Guinobatan, and continues to avail herself of his services up to the present time; that the plaintiff believes that the fees of the said doctor will not be less than five hundred (500) pesos for the services he has rendered her up to the present, and that said fees have not yet been paid by the plaintiff.

Wherefore the plaintiff prays the Court:

1st. To enter judgment decreeing a divorce between the plaintiff and the defendant.

2nd. To order the partition of the property belonging to the conjugal partnership and to adjudicate to the plaintiff her share thereof.

3d. Immediately to appoint a receiver who, under the direction of the Court, will administer all the property of the defendant during the course of the trial.

4th. To issue a special order prohibiting the defendant from disposing of his property during the course of these proceedings.

5th. To order that the defendant, or the receiver, as the case may be, pay to the plaintiff an allowance of six hundred pesos per month for her support during the course of the trial; a further sum, not less than five hundred (500) pesos, to defray the cost of medical attention, and also a reasonable amount to meet the expenses of the trial and her attorneys' fees.

6th. To decree such further provisions as the Court may deem just and equitable to the end that the defendant will not prejudice the plaintiff in the administration of the property; and to grant the plaintiff such other relief as legally she may be entitled to.

(Signed) SIERRA & ROCO,
Counsel for the Plaintiff,
Legaspi, Albay, P. I.

I, Teodora Arana de Villanueva, being first duly sworn according to law, declare: that I am the plaintiff in the above-entitled civil suit; that I have read the foregoing complaint that Attorneys Sierra & Roco have prepared and I hereby declare that the facts alleged are true in all particulars and I absolutely concur in all the prayers contained in the said complaint.

In witness whereof I sign this in the municipality of Tabaco, Province of Albay, P. I., this 16th of October, 1910.

(Signed) TEODORA ARANA.

Witness to signature:
(S'g'd) N. M. LIAMKO.

Subscribed and sworn to before me this 16th day of October, 1910. Deponent did not exhibit a cedula as she is exempt by reason of her sex.

(Signed) MARIANO BARATETA,
Notary Public until Dec. 31, 1910.

Internal Revenue Stamp P0.20.

11 ***Amended Answer.***

The defendant, through his attorneys, permission of the court first *he* having been had, files his amended answer to the amended complaint and alleges:

That he denies all and each one of the allegations of the amended complaint in each and every one of its parts.

As a special defense the defendant alleges:

1. That the defendant in this suit has sustained and continues to sustain litigation of great importance and has several obligations pending, which, if decided against him will amount to a sum in excess of all his property.

2. That if the alleged acts, or any of them, have been committed by the defendant, they have been performed with the authority, the knowledge and the consent of the plaintiff and have been condoned by her.

3. That the action which the plaintiff seeks to bring has prescribed.

For all of the foregoing, the defendant prays the court to dismiss the complaint with costs against the plaintiff; to set aside the dispositions contained in the orders issued, and to order the plaintiff to return to the conjugal dwelling.

Legaspi, Albay, March 8, 1911.

(Signed) MANLY & MACMAHON,
Attorneys for the Defendant, Legaspi and Neuva Cáceres.

12 UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance, Province of Albay, Eighth Judicial District.

Civil Case No. 1291.

TEODORA ARANA, Plaintiff,
vs.
MARIANO P. VILLANUEVA, Defendant.

For Divorce.

Before the Hon. P. M. Moir, District Judge.

ALBAY, March 8, 1911.

(Morning Session.)

Present:

Messrs. Sierra & Roco, Attorneys for the Plaintiff and
Messrs. Manly & MacMahon, Attorneys for the Defendant.

Mr. SIERRA: Before adducing evidence in this case, we desire to present a motion praying that the amended answer filed here by the defendant without previous consent of the Court and of which we were furnished a copy only this morning, be withdrawn from the record, for the reason that there was no written notification attached to the said amended answer of the day and hour on which it was intended to ask the Court to admit this answer; 2nd. because at the time of notification of the presentation of the said amended answer, the rules provide that three days' notice must be given to allow the presentation of argument thereon; 3rd. because, even though the said answer were admitted, the plaintiff would have the right, according to Rule 7, to 10 days' time within which to present either a demurrer or an amended complaint, and 4th. Because the defendant and his attorneys have had more that sufficient time to prepare their answer, as the facts now alleged in the amended answer must have been known by them before now. For all these reason-, we ask that the amended answer be withdrawn from the record.

13

Mr. MACMAHON: I believe it is not necessary to give the three days' time in order to present an amended answer. Sections 110 and 113 of the Code of Civil Procedure provide that a pleading may be amended, and not only here but in the Supreme Court; if the plaintiff wishes to be given time *he* may ask for it, and if *he* alleges surprise, we have no objection whatever to *his* being allowed the necessary time to prepare *him*self. Nevertheless we understand that our action falls within the provisions of the Code of Civil Procedure.

Mr. SIERRA: (He again takes the floor and reads last paragraph of Art. 10 of the Civil Code and the construction given to the word "notifications"—Renews his argument.)

Mr. MACMAHON: It has been the practice of this Court to
14 admit amendments to the complaint or to the answer at any stage of the proceedings and now we ask the Court that this amended answer be accepted and that the motion of the plaintiff be denied, and if the plaintiff requires time to prepare *him*self against the defense or the allegations contained in the amended answer, we are ready to concede whatever time is considered proper.

The COURT: It appears from this amended answer, if the allegations contained therein are true, that the facts there set out must have been known to the defendant and his counsel at the time of the commencement of this action, but it also appears that they are of such importance that the Court considers that it should allow the defendant the right to present the amended answer in this case. Nevertheless it can not be admitted in the present stage of the case because it has not been presented either in accordance with the provisions of Sec. 110 of the Code of Civil Procedure or with the rules prepared by the Supreme Court which govern the presentation of amendments of this sort. If the defendant persists in presenting the amended answer, he may do so after having requested a continuance, at his expense, and duly notifying the other side of the amendment in accordance with the law. This Court understands that it has not been the practice of the judge of this court to allow the status of the case to be changed after having been set for hearing, and that the requirements of the law have always been observed. It is
15 possible that in some small matters and cases brought to this Court on appeal from a judgment of a justice of the peace, where the parties have no counsel, that the amendment of a pleading has been allowed, even though it was not in accordance with Sec. 110 of the Code of Civil Procedure. But this has not been allowed in cases which have originated in this Court or in those amendments which completely change the status of the case.

Mr. MACMAHON: According to the ruling of the Court, we ask for the continuance of the case in order to present the amended answer.

Counsel for the plaintiff state that they are prepared to continue the hearing of the case at once.

Evidence of the Plaintiff.

Mr. Roco: We desire to announce that we propose to present the affidavit of a witness that is in Manila. The attorneys for the defendant have been notified and we ask that we be reserved the right to present it if he does not arrive in time. We offer as proof in this case the document attached to the record in the first complaint presented in this case, marked for identification as Exhibit "A" of the plaintiff, which document is the marriage certificate of Mariano Villanueva, defendant in this case, and Doña Teodora Arana, plaintiff, according to a copy issued by the then parish priest of Legaspi, Father Prudencio Santos, and which was legalized by the
16 Notary Public Paciano Imperial on the 21 of August, 1890. The attention of the Court is called to the fact that this document was presented as an integral of the original complaint and its authenticity has not been denied by the defendant in the answer.

COURT: Being part of the complaint there was no necessity to present it, but now it has been presented, Exhibit "A" of the plaintiff is admitted.

Mr. MACMAHON: We ask that all witnesses be excluded from the court room.

COURT: The witnesses are ordered excluded.

TEODORA ARANA, the plaintiff in this case, after having been duly sworn, testified as follows:

Mr. Roco:

Q. Please give your name, age, status, occupation and residence.
A. My name is Teodora Arana, a native of Albay and resident of Tabaco, Albay, sixty years of age and married.
Q. Are you the plaintiff in this case?
A. Yes, sir.
Q. How long ago is it since you married the defendant, Mariano P. Villanueva?
A. I don't remember how many years ago it was.
Q. How many children have you had?
A. Twelve.
Q. Please name them?
A. Pedro, Francisca, Rafael, María, Cándida, Delfin, Isidora, Mariano, Vicente, Alejandra and Antonio.
17 Q. Are all your children still living?
A. Nine are still living.
Q. Which of them died?
A. Antonio and Alejandra died, and I had a miscarriage.
Q. And all those that are now living, are they of age?
A. Yes, sir; Isidora is still unmarried.
Q. Where do you live now?
A. In Tabaco; I have rented a house.
Q. To whom does the house belong?

A. To a relative of mine.
Q. For what reason do you not now live with your husband?
A. I withdrew from the control of my husband because I could not tolerate that which he did to me.
Q. When did you abandon your husband's house?
A. About two years ago.
Q. But before these two years, did you live constantly in the house of your husband?
A. I went there only now and again, and sometimes I lived with my children.
Q. Since when did you definitely cease to live in your husband's house?
A. More than a year ago.
Q. Do you know Florencia Quijano?
A. Yes, sir.
Q. Have you seen her at any time?
A. Yes, sir.
Q. Where?
18 A. In Tabaco.
Q. Do you know whether your husband has had any sort of relations with Florencia Quijano?
A. He has had relations, and the proof is that they have children.

Mr. MACMAHON: I ask the Court to exclude from the record the last part of the declaration of the witness in which she says "and the proof is that they have children", because it is incompetent and it is not an answer to the question addressed to her.
COURT: The motion is overruled.

Q. What children are they?

Mr. MACMAHON: We object to the question because it is incompetent and because it tends to disclose the paternity of illegitimate children, a thing prohibited by law.
COURT: Objection overruled. Opposing counsel claims that his objection is based on articles 131, 132, 133 and 141 of the Civil Code, but this Court considers that these articles are not applicable in cases of this kind when, according to the showing of the plaintiff's counsel, reference is made to children which are publicly recognized by the defendant himself and maintained in his own house. Furthermore, the maternity of these children is shown in the complaint and, in this case, it is necessarily a matter of public knowledge. It
19 is agreed by co-nsel for both parties, with a view to saving time and to avoid unnecessarily lengh*ti*ning the record of this case, that the objection here set up be considered as applying to all those questions of the same nature in this case as that objected to to-day, it being further understood that the ruling of the Court on this objection should be considered as rendered in all and each one of the said objections, and that exception is duly taken thereto.

A. Melania, Toribia, Julio, Felix and Teodoro.
Q. Have any of these died?
A. Yes, sir; one.

Q. Which of them?
A. Teodoro.
Q. Before living in Tabaco, where did you and your husband reside?
A. Here in Legaspi.
Q. How long ago, more or less as you remember, did you go to live in Tabaco?
A. I do not remember how many years ago it was.
Q. Long before the revolution or afterwards?
A. It was still in the time of the Spanish Government.
Q. Which was the last of your children that was born here in Legaspi?
A. Pedro.
Q. Which followed Pedro?
A. Francisca.
20 Q. Was Francisca born in Tabaco or in Legaspi?
A. Legaspi.
Q. And this was the last that was born in Legaspi?
A. Antonio and Rafael were also born in Legaspi.
Q. And all the rest, in Tabaco?
A. Yes, sir; in Tabaco.
Q. Please state what were the troubles that you mentioned a while ago and what were the motives that induced you to abandon your husband's house?
A. The trouble was that my husband commenced to take care of those children of his, and he had previously promised me that he would have nothing more to do with their mother; but when I arrived in Tabaco, coming from Catanduanes, I learned that he had returned to his relations with this woman.
Q. When did the defendant promise you that he would have nothing more to do with the mother of these children?
A. I do not remember in what year it was.
Q. Were you still living in Legaspi or were you already in Tabaco?
A. We were in Tabaco.
Q. And when did you learn that your husband had renewed his relations with Florencia?
A. I learned it when my husband arrived from Manila and I returned to Tabaco, from Catanduanes.
Q. Do you know where Florencia Quijano lived at the time you were here in Legaspi?
A. I know that she lived here in Legaspi, near the bridge.
21 Q. Where did your husband know Florencia; in what town?
A. Here in Legaspi.
Q. Do you know where he had these children with Florencia Quijano, whether it was in Legaspi or here in Tabaco?
A. He also had some here in Legaspi.
Q. Or those which he had with this Florencia Quijano?
A. Yes, sir.
Q. At that time, when you were here in Legaspi, did you have any

knowledge of these relations which existed between your husband and Florencia?

A. Yes, sir; I knew of them, but I put up with them so as not to cause a public scandal.

Q. How do you know; of your own knowledge or by rumors and talk that reached your ears?

A. I heard the news and I also saw.

Q. Whom did you see?

A. I caught them—my husband and Florencia.

Q. Was there any trouble between you on that account?

A. Yes, sir.

Q. Where did you catch your husband with Florencia?

A. In the house of Florencia.

Q. In what town?

A. Here in Legaspi.

Q. When you were here in Legaspi, did you know that Florencia had children with your husband?

A. I knew.

Q. After these disputes between you and your husband, did you then both leave Legaspi?

22 A. Then we left here, we left Legaspi.

Q. Where did you go?

A. To Tabaco.

Q. Did these troubles continue between you during the first years you live- in Tabaco?

A. They continued.

Q. For what reason?

A. My husband did not want to be controlled or restricted by me.

Q. In what way?

A. In the matter of this woman.

Q. Where did Florencia live during the first years that you lived in Tabaco?

A. Here in Legaspi.

Q. Did your husband made frequent trips to Legaspi at that time?

A. Every Saturday.

Q. When did your husband take charge of these children of Florencia?

A. I do not remember when my husband brought these children to our house in Tabaco.

Q. Which ones did he bring?

A. The five brothers.

Q. Did you oppose the entry of these five children of your husband in your house or not?

A. My husband told me to receive these five brothers because he would have to separate from that woman.

Q. Do you mean to say that your husband promised you
23 that he was going to sever his relations with the mother of these five children?

A. Yes, sir.

Q. And in view of that consideration you consented to take these children for the sake of that promise?

A. Yes, sir.

Q. When you consented to take these children, did you know of any other adultery committed by your husband with any other persons?

A. I do not know, because I did not remain constantly in the house. I only went from time to time.

Q. Then you were not aware of any other adultery of your husband, outside of that committed with Florencia Quijano?

Mr. MACMAHON: We object to the question as being suggestive because it appears as though the attorney wishes to put the statement in the mouth of the witness.

COURT: Objection sustained.

Q. Do you, or do you not know, whether your husband had or not committed adultery with other persons at the time when he brought the children?

A. No, sir; I do not know.

Q. Where does Florencia live now?

A. In Tabaco.

Q. Since — did she go there?

A. After the arrival of the Americans in this province.

Q. Do you know when Florensia went to live there in Tabaco?

A. When I arrived in Tabaco from Virac.

Q. With whom were you living in Virac?

A. With Francisca, my daughter.

Q. Why; where was your husband when you were in Virac?

24 A. In Spain.

Q. In what year was that?

A. I do not remember what year it was, because he went twice to Spain.

Q. Do you remember if it was before the American occupation?

A. It was when the Americans arrived here that he left for Spain.

Q. How long was he more or less, in Spain?

A. One year.

Q. During that time were you living with your daughter Francisca?

A. I stayed with her a year and a half.

Q. With relation to the time in which your husband was in Spain, when did Florencia move to Tabaco?

A. I found Florencia already in Tabaco when I returned from Virac.

Q. Who arrived first in Tabaco; your husband from Spain or you from Virac?

A. I do not know which of us it was.

Q. Do you not remember?

A. I do not know.

Q. When you had left for Virac, had Florencia already gone to live in Tabaco?

A. No, sir; she had not yet gone there.

Q. When your husband left for Spain and you remained in

Tabaco, and also went to Virac*t*, do you know if your husband had severed his relations with Florencia?

A. So far as I know my husband no longer went to Florencia's house.

25 Q. After he returned from Spain, do you know if he resumed his relations with Florencia?

Mr. MACMAHON: I object to the question because it is *not* (?) incompetent.

COURT: Objection overruled.

Mr. MACMAHON: Exception.

A. I found that they again resumed their relations.

Q. So that you arrived in Tabaco coming from Virac, after he had already returned from Spain?

A. Yes, sir.

Q. And what was the true reason that you left your husband's house?

A. On account of this woman.

Q. Apart from the children had with this woman, did you hear or have any knowledge of your husband having other children, with another woman in other relations, recognized by him as such children?

A. I was only told that he had.

Q. Did he make any attempt to bring any child to your house or not?

A. No, sir; they are with his daughter.

Q. What daughter?

A. Melania.

Q. Melania is one of your husband's children with Florencia?

A. Yes, sir.

Q. Does Melania now live in her husband's house?

A. Yes, sir.

Q. Why?

A. Because she is now married.

26 Q. With whom?

A. With José Salcedo.

Q. Is he a doctor living in Tabaco?

A. Yes, sir.

Q. Do you know whether or not if your husband took any other children that were not yours to the house of this Melania?

A. I was informed that Melania was taking care of some of her other brothers.

Q. Do you know if these other children that were taken to Melania's house were Florencia's children or those of some other woman?

A. Children of another woman.

Q. What is the name of this other woman, if you know?

A. Quiteria. I do not know her surname.

Q. What are the names of the children of Quiteria that your husband took care of?

A. I do not know because I never left the house.

Q. But do you remember how many there were, more or less?
A. It appears that there were four or five.
Q. Do you know a young woman by the name of Maria who lives in Melania's house?
A. I do not know her.
Q. How do you know that these children of Quiteria belong to your husband?
A. I was told so.
Q. Did you ever hear of a certain Vicenta Buenaflor?
A. I have never heard of her.
27 Q. When you married Mr. Villanueva, did you bring any sort of property to the marriage?
A. I brought none; neither did he.
Q. How did you live then? What did you live on when you married?
A. On his wages.
Q. Where was he?
A. He was employed in the store.
Q. In Legaspi?
A. Yes, sir.
Q. Did you acquire any kind of property during and after the marriage?
A. Yes, sir.
Q. What kind of property?
A. Hemp lands, rice lands, the house and coal mines.
Q. Were these properties inherited by either of you or were they acquired through your work or business?
A. Through our work.
Q. Whereabouts is the greater part of these properties situated?
A. In Tabaco.
Q. Are they large or small?
A. Large, they are worth more than twenty thousand pesos.
Q. Has your husband had any large business there in Tabaco?
A. Yes, sir.
Q. What have you lived on during the last time you have been separated from your husband?
A. I lived the best way I could.
28 Q. Have you any married children?
A. Yes, sir.
Q. Did you live with any of them?
A. Yes, sir; I went from one house to another.
Q. Did you stay long in each house?
A. Sometimes a year or a few months; sometimes a month.
Q. Did your husband pay for your maintenance while you lived with your children?

Mr. MACMAHON: I object to the question as immaterial and irrelevant.
COURT: Objection sustained.

Mr. MACMAHON:

Q. You have told us here that you could not endure the actions

of your husband; you also said that you caught your husband in Florencia's house. Can you tell us when it was that you caught him?

A. I caught my husband with Florencia while we were still living here in Legaspi.

Q. Was this the only time you caught your husband?

A. It was not the only time.

Q. How many times did you catch your husband with Florencia?

A. Three times it appears.

Q. All here in Legaspi?

A. Yes, sir.

Q. All of them before you went to live in Tabaco?

A. Yes, sir.

Q. You never caught your husband again with Florencia apart from those three times?

29 A. No, because I didn't leave my house any more.

Q. You have never seen your husband with Florencia or any other woman since that time?

A. I never left the house; that is why I saw nothing else.

Q. Do you remember the occasion on which you were married in Legaspi?

A. Yes, sir.

Q. The defendant here was seriously ill was he not?

A. He was getting a little better so we were betrothed.

Q. It is not true that he was at the point of death?

Mr. Roco: We object to the question as incompetent and irrelevant.

Mr. Macmahon: This is a preliminary question and tends to establish a basis.

Court: Objection sustained because the question is irrelevant and immaterial.

Mr. Macmahon: Exception.

Q. Why did you marry while your husband was sick, or why did you not marry either before his illness or wait until he get well?

Mr. Roco: We object to the question for the reasons already given.

Court: Objection sustained.

Mr. Macmahon: Exception.

Q. It is not true that when your husband got better and learned that he had been married to you in articulo mortis, he said he would not agree to the marriage and that he would annul it; that

30 he did not do so because of an arrangement you entered into between you?

Mr. Roco: We object to the question for the reasons already given.

Court: Objection sustained.

Mr. Macmahon: Exception.

Q. It is not true that you told the defendant that if he did not

try to annul that marriage that he could live like a single man and free to do what he wanted with reference to other women?

Mr. Roco: We object to that question for the reasons we have already given and because if the permission were actually given it would not be valid as it is contrary to the law.

COURT: Objection sustained.

Mr. MACMAHON: Exception.

Q. It is not true that the woman named Florencia, of whom you spoke before, was the fiancee of the defendant before he married you and that he was going to marry her if he had not been forced to marry you?

Mr. Roco: We object to the question for the reasons given and because even though it were true, it would have nothing to do with the matter before the court.

(The parties argue.)

COURT: Objection sustained.

Mr. MACMAHON: Exception.

Q. You have said that you and your husband went to Tabaco on account of the trouble you had with him over this Florencia.

31 Is it not true that you went to Tabaco because your husband was sent to Tabaco by the firm of "Russell and Starless," for whom he worked at that time?

Mr. Roco: We object to the question because it tends to lead the witness into error; the witness said that after those troubles they went to Tabaco and not that the troubles were the cause of their going to Tabaco.

COURT: Objection overruled. The witness may explain what she wants to say and may answer the question.

A. We went also to Tabaco because my husband was storekeeper.

Q. You have said that your husband, the defendant here, told you to receive these five children in your house. Is it not true that these five children went to live in your house on different occasions and dates?

A. It is true that these children came to our house on different dates; but the defendant brought them there and I did not say — word.

Q. That is to say that the oldest, Teodoro, was the one that he brought first, and the others in the following years. Was it not so?

A. Yes, sir.

Q. You have said that Florencia went to live in Tabaco after the arrival of the Americans. Is it not true that she went to live there to live with her son Julio in the year 1900, when you were in Manila or in Spain?

A. I found her in Tabaco only.

Q. You do not know the date on which she moved?

32 A. No, sir.

Q. She was not in Tabaco when you left there after the arrival of the Americans?

A. She was not yet there.

Q. You have sought to explain the true reason or reasons why you left your house. Is it not true that you abandoned it at the instigation and advice of your children or of some of them?

A. No, sir. I left my house of my own accord because I could no longer tolerate it nor do as I wanted to in the house. My husband and I never spoke although we were at the table.

Q. Did none of your children advise you to leave the house?

A. None of them.

Q. Is it not true that certain of your children became angry with the defendant because he would not give them money they asked for, and they told you to leave your husband's house and bring this action against the defendant?

Mr. Roco: We object to the question because it is immaterial. The action is not between father and children.

COURT: Objection overruled.

A. I know nothing about that.

Q. Can you tell us the exact date on which you left the house?

A. I only remember that it was over a year ago.

Q. Would it be two years?

A. At the end of this year it will be two years.

Q. At the end of this year it will be two years?

33 A. Yes, sir.

Q. Remember carefully; were you not still living in the house of the defendant in the month of January of 1910, at the time of your daughter Isidora's birthday?

A. I went there then; but this year, when we celebrated my daughter's birthday, I did not go.

Q. But in the year 1910, when you celebrated your daughter's birthday, you went there and stayed in the house for several days and several nights?

A. I stayed one night only.

Q. And after that you left the house and have never since returned?

A. Never.

Q. For the reason that you could no longer tolerate the actions of your husband?

A. Yes, sir.

Q. Can you tell us specifically what were the acts of your husband that you refer to?

A. For the acts which were done to the woman Florancia (sic).

Q. And they are only the acts which refer to the woman Florencia?

A. Yes, sir.

Q. Apart from these acts, was there no other reason for your leaving your husband's house?

A. There was another reason; I could not have my way in the house; I lived in it as though I were a servent.

Q. Then on account of those acts with the women Florencia and because you could not do as you pleased in the house, these were the only reasons why you abandoned your and your husband's house?

34

A. Yes, sir.
Q. There were no other reasons besides these?
A. No, sir; there was no other reason.
Q. Can you explain to us now it is that you were able to endure the acts of your husband with this Florencia for a period of forty years, and only within these last few days you can no longer tolerate the acts of the defendant?

Mr. Roco: We object to the question as incompetent, irrelevant and immaterial, and furthermore because it tends to establish a defense that does not appear in the answer filed.
Court: Objection overruled.
Mr. Roco: Exception.

A. I did not always live in the house for these reasons, and I sometimes left it.
Q. You always returned to it, up to the last time you left in 1910?
A. Sometimes I returned to the house, but after a long time.
Q. It is not true that the children of this woman named Florencia have been in your house since they were little?
A. They came to live in my house on account of my husband's promise never to return to Florencia.
Q. And all these children of Florencia, they are now of age?
35 A. Yes, sir.
Q. You have said that one of the reasons why you left your and your husband's house was because you could not have your own way in the house. It is not true that some of your children told you that you were not well treated in the house?
A. No, sir.
Q. If it had not been for the insistence of some of your children you would not have abandoned your house, nor would you have brought this suit against your husband, would you?

Mr. Roco: We object to the question because it is immaterial.
Court: Objection overruled.
Mr. Roco: Exception.

A. No, sir. My children have accompanied me here simply because I notified them.
Q. And they advised you to abandon your house and bring this suit did they not?

Mr. Roco: We object to the question as immaterial.
Court: Objection overruled.
Mr. Roco: Exception.

A. No, sir, it is on my own account.
Q. Then the reasons why you abandoned your house and brought this suit were those which you have just mentioned with respect to the actions of your husband with Florencia and that you could not have your way in the house, is it not true?
A. Yes, sir.
36 Q. And these are the only reasons why you abandoned your house and brought this suit?

A. Yes, sir.

Q. And you knew nothing more nor had any other complaints against your husband?

A. That is all, and furthermore I do not want to join my husband but I want our property to be divided between us.

Q. And you have not talked with your children about leaving your house nor about bringing this action?

A. All this is of my own free will and I only told my children to accompany me.

Mr. Roco:

Q. In replying to the questions of Mr. MacMahon, you said that the children of Florencia were not all brought to your house at one time but on different dates. Say if that is true?

A. Yes, sir.

Q. Did much time elapse between the date on which the first child was brought and the time the others were brought?

A. Not much time. Sometimes three months, sometimes four months.

Q. How old was the eldest of the children when it was brought to your house?

A. About twelve or thirteen years of age.

Q. And it was during this time that your husband promised you not to have any more relations with Florencia?

A. Yes, sir.

Q. And you, when you admitted them, were you or were you not influenced by the consideration of this promise?

37 A. Yes, sir.

Q. You also said that before finally abandoning your husband's house for ever, you no longer lived there permanently. Is that so?

A. Yes, sir; I was no longer living with him constantly.

Q. Which of your children was then living with your husband?

A. A daughter only.

Q. Which one?

A. Isidora.

Q. Married or single?

A. Single.

Q. At the time you visited your husband's house, did you enter into marital relations with him? Did you sleep with him?

A. No, sir. I slept in another room.

Q. In which room did you sleep?

A. I slept in Isidora's room on a cane bed.

Q. Have you, or did you have your own bed in that room?

A. Yes, sir; the one I mentioned.

Q. What sort of a bed?

Mr. MacMahon: I object to the question as being irrelevant and impertinent.

Court: The objection is sustained because it is not alleged in the complaint that the defendant maltreated his wife; only the adultery of the husband is alleged.

Mr. Roco: Exception.

Q. Since when did you cease to have marital relations with
38 your husband to sleep in the same room and to live with him?

A. Approximately I think it is thirteen years.

Q. And when you were in the house, did you speak to him, or did you exchange any confidences with him after his return from Spain?

Mr. MACMAHON: We object to the question as being immaterial, irrelevant and incompetent, and because it is not alleged in the complaint.

(The parties argue the point.)

COURT: The objection is sustained. The only grounds set out in the complaint for a divorce, are those of adultery committed by the defendant; no allegation is made therein that there was any ill treatment of the plaintiff, so the objection is sustained.

Mr. Roco: Exception.

Q. During all this time when you were at table at meal times in your husband's house, did you speak to each other?

Mr. MACMAHON: I object to the question as being immaterial, irrelevant and incompetent.

COURT: Objection sustained.

Mr. Roco: Exception.

Mr. MACMAHON:

Q. You have said that often, a great part of the time, you were not with your husband; in that case you did not assist your husband to earn that conjugal property, did you?

Mr. Roco: We object to the question as being irrelevant
39 and immaterial. The law does not require a woman to assist her husband in business.

COURT: Objection sustained. The law distinctly says that property acquired by the husband by means of his labor or business during the marriage, is conjugal property.

Mr. MACMAHON: We desire to repeat the question on the ground that the plaintiff has testified that through her work and that of her husband they have acquired this conjugal property.

COURT: The objection is sustained, nevertheless.

Q. You have said that you left the house on various occasions. Is it not true that you left it in order to visit your children that were grown up and were married and also had children, as is usual with any old lady to visit her children?

A. It is true that I went to visit my children.

Q. You have said that for thirteen years you have had no marital relations with your husband; that you have not slept in the same bed. Is it not true that you have not been able to live and have the marital relations of which you speak on account of the illness and advanced age of the defendant?

A. Although neither of us was ill, we did not share the same bed.

Q. During all this time the defendant has been under the care of a doctor and has made two trips to Europe to regain his health, is it not so?

40 A. Yes, sir.

Q. And now you are 63 years of age, are you not?

A. Yes, sir.

Q. And the defendant is 66 years old, is he not?

A. Yes, sir.

Q. And during this period of thirteen years you have made two or three trips to Manila with the defendant, have you not?

A. No, sir; we two did not go together. I went with my daughter Francisca.

Q. But in 1900, did you two not go together to Manila from Tabaco when the Americans were here?

A. Yes, sir; I remember that.

Q. You said that the last time you slept in the same room as your daughter Isidora. This Isidora is single, is she not?

A. Yes, sir.

Q. It is not customary for old Filipina ladies and for mothers, to sleep in the same room as their spinster daughters?

A. Yes, sir.

COURT: The hearing is postponed until this afternoon at two o'clock.

Afternoon Session.

MARIANO BARATETA, witness for the plaintiff, after having been duly sworn, testified as follows:

41 Mr. Roco:

Q. Please give your name, age, status, occupation and address.

A. My name is Mariano Barateta, I am a native of Bacacay, resident of Tabaco, 32 years of age, married, by profession an attorney and justice of the peace of the municipality of Tabaco.

Q. Are you a resident of Tabaco?

A. Yes, sir.

Q. What official position do you hold?

A. I am the justice of the peace of Tabaco.

Q. (Showing the witness exhibit "B") Say what document this is?

A. It is the record of a complaint filed by the provincial fiscal for the infraction of an ordinance, heard in the court.

Q. You tried this case?

A. Yes, sir.

Q. (Inviting the attention of witness to the names of the defendants.) See here; among these defendants there appears one of the name of Julio Villanueva. Do you know him?

A. Yes, sir.

Q. Do you know Don Mariano Villanueva, the father?

A. Yes, sir.

Q. And his wife also?

A. Yes, sir.

Q. Do you know whether or not this Julio Villanueva is the son of either of them?

42 A. Yes, sir; he is the son of Mariano Villanueva.

Q. (Calling the attention of witness to a signature appearing at page 7 of the record). Whose signature is that?

A. Julio Villanueva Quijano.

Q. Was this signature made in your presence?

A. Yes, sir.

Q. Do you know whether or not this Julio Villanueva customarily uses this surname?

Mr. MACMAHON: We object to the question as being immaterial, irrelevant and incompetent.

COURT: Objection disallowed.

Mr. MACMAHON: Exception.

A. Yes, sir; that is the surname he uses.

Q. He publicly holds himself out in Tabaco under this surname?

A. Yes, sir.

Q. Look at these other signatures that appear in the body of this record. Is this his signature also?

A. Yes, sir. (At page 26.)

Mr. ROCO: We offer as evidence the document marked "B," inviting the attention of the Court to the signatures identified at pages 7 and 26.

Mr. MACMAHON: We object to the admission of this document as being irrelevant, incompetent and immaterial.

COURT: The Court is of the opinion that counsel has no right to take this record from the court of the justice of the peace

43 and attach it to this case without permission of this court, and it is further of the opinion that it is not necessary to present this record here to prove that which the witness has proved in his testimony. The document marked "B" which is part of the record of the court of the justice of the peace, is excluded.

Mr. ROCO: We have no objection whatever to excluding the document, with that understanding.

Mr. MACMAHON:

Q. Mr. Mariano Villanueva has been in the court of the justice of the peace and has seen the signature that Julio Villanueva placed here?

A. Mariano Villanueva was not in the justice of the peace court when Julio Villanueva signed his name. He was away.

Q. And he knew nothing of these signatures?

A. No, sir; Don Mariano Villanueva knew nothing of these signatures.

Mr. MACMAHON: We ask the court to set aside all the testimony of this witness because he has not shown that these signatures were made in the presence of Mr. Mariano Villanueva.

COURT: Motion denied.

Mr. MACMAHON: Exception.

JOAQUIN TOMAS, witness for the plaintiff, after having duly sworn, testified as follows:

44 Mr. Roco:

Q. Please give your name, age, status, occupation and residence.
A. My name is Joaquin Tomas, I am a native of Manila, resident of Legaspi, Albay, 69 years of age, a widower and property owner.
Q. Do you know Don Mariano Villanueva?
A. Yes, sir.
Q. Do you know his wife also?
A. Yes, sir.
Q. How long have you reside- in the Province of Albay?
A. Since the year '56.
Q. 1856?
A. Yes, sir.
Q. And how long have you known Mr. Villanueva?
A. I knew him here in Legaspi, but I had no relations with him until the year 1883 or '84.
Q. Do you mean to say that it is since that time that you have had friendly relations with him?
A. Yes, sir.
Q. Did you ever settle in the pueblo of Tabaco?
A. Yes, sir.
Q. About what time?
A. I lived in Tabaco from the year 1896.
Q. How long were you in Tabaco?
A. From '96 until 1900.
Q. Have you had any relations, other than those of friendship, business relations or interests with Mr. Villanueva?
45 A. I was his partner.
Q. For how long?
A. Since 1896.
Q. According to that, then when you went to Tabaco you had something to do with Mr. Villanueva's business?
A. The first time I went to Tabaco, it was to liquidate the business of the firm of Villanueva & Co., because I was appointed liquidator. This was finished in 1895, and afterwards, in 1896, Pedro Villanueva and I entered into partnership with him.
Q. Did Don Mariano also have any interest in the firm which you wound up?
A. Yes, sir.
Q. What amount of confidence was there between Mr. Villanueva and you by reason of these commercial and friendly relations?
A. So much that we treated each other like brothers.
Q. Were you the recipient of any confidences on the part of Mr. Villanueva?
A. Yes, sir.
Q. Do you know Florencia Quijano?
A. Yes, sir.
Q. How long have you known her?
A. I knew her here in Legaspi by reputation; but it was in

Legaspi that I heard of her through Don Mariano Villanueva himself, confidentially.

Q. Do you know if Mr. Villanueva has had relations of
46 any sort with Florencia Quijano?

A. Yes, sir.

Q. Who told you?

A. Don Mariano Villanueva himself.

Q. What kind of relations?

A. He had children by the woman.

Q. What children did he have? Do you remember their names?

A. Melania, Felix, Toribia, Julio.

Q. Do you remember if there was another son named Teodoro?

A. Yes, but I didn't have much to do with him.

Q. Is he still living?

A. He died.

Q. When he died was he of age?

A. Yes, sir.

Q. What was his occupation?

A. He was the captain of a boat belonging to Mariano Villanueva.

Q. Did Don Mariano Villanueva confess to you that he maintained these relations with Florencia Quijano?

A Yes, sir; because in the year 1900, before we went together to Spain, he wanted to make a will and he told me that he wished to better the condition of Melania, Felix, Toribia and Julio. "I want to give them a larger amount" he told me, and I replied like the friend of his I was, that it was not right to give all to them; that he had the third part to dispose of as he wished, and in my opinion was at liberty to give it all to these four that he
47 mentioned. In that way they would received a larger share than the legitimate children because the latter would have to divide among ten; I did not believe that Florencia's children could complain that they had not been looked after.

Mr. MACMAHON: We ask the Court to set aside this history that the witness had related because it is irrelevant, immaterial and incompetent.

Mr. ROCO: Part of the confidence which the defendant reposed in him.

COURT: The prayer of the attorney for the defendant is granted in so far as it concerns the conversation which they had about the will.

Q. Do you know if these children which you have mentioned lived in the house of Mr. Villanueva?

A. They lived there in his house.

Q. From what date, more or less, did those children live in the house of Mr. Villanueva?

A. At first Melania was in the house of the sister.

Q. Whose sister?

A. Sister of Don Mariano Villanueva, whose name was Trinidad Villanueva. The latter lived in the house and office of Villanueva

because they had separate houses and Villanueva lived in what they called the small house.

Q. And afterwards?

A. It was when Trinidad died that they all lived together. Melania was already there when Felix and Toribia went. A year or some months later he took Julio also, and I don't know what doubts Mr. Villanueva had; he told me at Florencia's that he was
48 not sure if he was his son; and from that there arose a question as to Julio. I did not see that he had any relations with Florencia afterwards.

Q. Do you know if Mr. Villanueva continued his relations with Florencia in the year 1896, when you were in Tabaco?

A. Not any more.

Q. How do you know that?

A. On account of the troubles he had with Florencia.

Q. How did you know of these troubles?

A. Told by himself.

Q. By Mr. Villanueva?

A. Yes, sir; that was why he did not want to receive Julio, and he——

Q. According to that, from the year 1896, when you were in Tabaco, up to the year 1900, when Mr. Villanueva left for Spain, he had severed his relations with Florencia Quijano?

A. I think so, because he was no longer in Tabaco.

Q. Where was Florencia?

A. Here in Legaspi.

Q. Do you know if Mr. Villanueva made many trips to Legaspi?

A. Very seldom from that time.

Q. At that time when you were living in Legaspi, were the relations between Mr. Villanueva and his wife harmonious?

49 A. Their relations were only friendly ones, but somewhat cold.

Q. You lived in the same house?

A. Yes, sir.

Q. You said just now that you accompanied Mr. Villanueva on his trip to Europe. Did you return together?

A. Yes, sir.

Q. About when did you arrive from Spain?

A. We arrived in Manila in August, 1901. I came on immediately to Albay and he remained in Manila.

Q. Did Mr. Villanueva take any children with him to Europe?

A. Yes, sir.

Q. Which?

A. Melania, Isidora, Toribio, Felix and Vicente.

Q. Of all those which he took, which were the children of his marriage?

A. Isidora and Vicente.

Q. No others?

A. None.

Q. Do you know what was then and is now the usual surname that these children of Florencia Quijano bore?

A. Villanueva.
Q. How do you know that?
A. By the signatures they used and as I knew through confidential talks with him and the friendship that existed between us. Besides, Felix had to matriculate in a London college and I told him there in Manila.

50 COURT: Confine yourself to answering the questions of the attorney; all that does not matter.
Q. Do you know a Quiteria Buenconsejo of Tabaco?
A. Personally, I do not, sir.
Q. You know her by name.
A. Yes, sir.
Q. How is it you know her by name?
A. Because it was known in Tabaco and I learned it from Don Mariano Villanueva himself, that she was his mistress.

Mr. MACMAHON: We ask the Court that this answer of the witness be stricken from the record as incompetent, irrelevant, immaterial and as not being an answer to the question.

COURT: Motion denied.
Mr. MACMAHON: Exception.

Q. Did Mr. Villanueva tell you anything concerning this Quiteria Buenconsejo?
A. Yes, sir; that he had children with her.
Q. Do you know if he had taken charge of any of these children?
A. I saw one.
Q. Where?
A. He took her to his house.
Q. What is her name?
A. Maxima.
Q. Is that the one you know?
A. Yes, sir.
Q. (Showing the witness Exhibit "C") I call your attention to the signature at the foot of this exhibit. Can you recog-
51 nize whose signature it is?
A. It is Don Mariano Villaneuva's.
Q. By reason of the relations you have had with him do you know his signature well?
A. Yes, sir.
Q. Is this the same that he uses in his documents?
Q. Yes, sir.
Q. Is this his handwriting?
A. Yes, sir, and his rubrica.
Q. Now see what this document is and explain to the Court.

Mr. MACMAHON: I object to the question because the document may be offerred and the best proof is the document itself.
Mr. ROCO: I withdraw the question.

Mr. MACMAHON:

Q. You have said that Don Mariano Villanueva told you in confidence the things that you have stated.

A. Yes, sir.

Q. So that he had a great deal of confidence in you?

A. Yes, sir.

Q. And why is it that you have no objection to divulging the things told you in confidence by Mr. Villanueva?

A. Certainly, because from the moment I swear to tell the truth about what I know, I must not hide anything.

Q. So that until now you have sworn to tell the truth you have concelled these things?

A. Yes, sir.

Q. You have spoken to nobody about what you know of
52 these things?

A. I have told nobody of this Mr. Villanueva prejudice: he told me these things in confidence in the same way that I have confided in him.

Q. Can you explain how it is that the attorney for the plaintiff knows about all these things?

A. When he summoned me as a witness and asked me if I knew anything of the matter, I told him what I knew; and that yes, I had a great deal of confidence in Mr. Villanueva but that, when I learned of the affair, my sympathies inclined to the wife, because she complained to me——

Mr. MACMAHON: Confine yourself to answering the question and do not refer to other matters.

Mr. ROCO: The witness ought to be allowed to answer in that way because the witness is being asked for comment.

Q. You say that when you were in the house of Mr. Villaneuva in the year 1896, the various children of his named Felix, Julio, Melania and others, went by the surname of Villanueva?

A. Yes, sir.

Q. Then Mr. Villanueva's wife knew that they used that surname?

A. I believe so.

Q. So that she knew of it?

A. I think so, because although it is true that she has not
53 much education—she can hardly write—she must have know- that they called themselves Villanueva.

Q. She must have known it and also all that concerned Maxima who was brought to her house, is it not so?

A. Maxima was by another mother; that was later.

Q. Did you not say that Maxima was taken by Villanueva to his house?

A. Yes, sir, afterwards.

Q. And you say that Mrs. Villanueva knew all about Maxima?

A. I do not know. I know that Maxima was a daughter of one Buenconsejo.

Q. Was not Maxima in Villanueva's house in 1896, when you were there?

A. No, sir.

Q. So that all you know about Maxima is hearsay?

A. No, sir; but it was after our return from Spain.

Q. You did not live with him after his return from Spain?

A. Yes, sir. Our partnership continued until 1903. The dissolution of our partnership was commenced in exactly a year after our return from Spain, in 1901.

Q. You have said that you were a partner of Mr. Mariano Villanueva and his son Pedro is it not true that you had some trouble with Mr. Villanueva over some business?

A. We never had any trouble over the business of our partnership. But we did have differences over the collection of the rents from the mines; they were not personal questions with me;
54 they occurred because I defended the interests of my sister Victoria as a partner in the mines.

Q. So that you have had trouble with him?

A. Differences on account of my principal.

Q. Is it true that you do not have anything to do with each other now?

A. Yes, sir. We have nothing to do with each other now because he has withdrawn his friendship and I have done the same thing; not because I have any personal feeling in the matter but on account of the negotiations I had to make in defense of the interests of my sister, whose attorney I was.

MARIANO SANCHEZ, witness for the plaintiff, after having been duly sworn, testified as follows:

Mr. Roco:

Q. Please give your name, age, status, occupation and residence.

A. My name is Mariano Sanchez, a native of Nueva Caceres, a resident of Tabaco, Albay, 23 years of age, married, municipal school teacher.

Q. Where do you live now?

A. In Tabaco.

Q. Since when?

A. Since the year 1900.

Q. What is your present occupation?

A. I am the principal of the school in Tabaco.

Q. Teacher of English?

A. Yes, sir.

55 Q. How long have you held your present position?

A. As principal, since 1904, in Bacacay. After a year they transferred me to Tabaco.

Q. Do you know one Quiteria Buenconsejo, a resident of Legaspi?

A. Yes, sir.

Q. Do you know if this Quiteria has any children?

A. Yes, sir; I know that she has four.

Q. Do you know any of these children of Quiteria?

A. Yes, sir; I know the four of them.
Q. What are their names, if you remember them?
A. Maxima, Balbino, Fortunato and Emilia.
Q. Do you know where Emilia is now?
A. Yes, sir.
Q. In whose house?
A. She is in the house of Dr. Salcedo, husband of Melania, the illegitimate daughter of Villanueva.
Q. Do you know if this Emilia goes to any school?
A. Yes, sir.
Q. Under what name is she entered there?

Mr. MACMAHON: I object to the question as immaterial, irrelevant and incompetent.
COURT: Objection overruled.
Mr. MACMAHON: Exception.

A. According to her, when she presented herself there, her name was Emilia Villanueva.
Q. Do you know if she is usually known by that name?

56 Mr. MACMAHON: I object to the question for the same reasons as in the former one.
COURT: Objection overruled.
Mr. MACMAHON: Exception.

A. That then is the name she signs.
Q. Is she not called by any other name than that?
A. No, sir.

MARIA LOPEZ, witness for the plaintiff, after having been duly sworn, testified as follows:

Mr. Roco:

Q. Please give your name, age, status, occupation and residence.
A. My name is Maria Lopez, a native of Manila, resident of Tabaco, 46 years of age, and a widow.
Q. Are you a native of Tabaco?
A. No, sir. I came to Tabaco after I already had a child.
Q. How long have you lived in this pueblo?
A. About twenty years.
Q. Was your husband living when you moved here?
A. Yes, sir.
Q. Did your husband die there?
A. Yes, sir.
Q. Do you know Don Mariano Villanueva?
A. Yes, sir.
Q. And his wife?
A. Yes, sir; I know her also.
57 Q. Do you know a woman here in Tabaco named Florencia Quijano?
A. Yes, sir.
Q. How is it you know Don Mariano Villanueva and his wife?

A. Because they formerly appointed me a collector in the market.
Q. What for? What had they to do with the market?
A. They were the asentistas.
Q. The contractors?
A. Yes, sir.
Q. Did you frequent Mr. Villanueva's house on that account?
A. Yes, sir; when I went to take the money I had collected.
Q. Do you know whether Mr. Villanueva has had any relations of any sort with Florencia Quijano?
A. Yes, sir.
Q. What sort of relations?
A. I knew that Don Mariano Villanueva had children by Florencia Quijano.
Q. How long have you known Florencia Quijano?
A. It was when we became neighbors that I learned it.
Q. How long ago?
A. Five or six years.
Q. Here?
A. Yes, sir.
Q. According to that you lived near the house in which Florencia Quijano lived?
A. Yes, sir.
Q. And by reason of your vicinity you were able to see the persons that frequented Florencia Quijano's house?
58 A. I also saw the persons that were there.
Q. At the present time, does Florencia Quijano continue to be a neighbor of yours?
A. Yes, sir.
Q. With whom has Florencia Quijano lived during the time you have known her in that house?
A. With her children.
Q. Now tell us; have you ever seen Mr. Villanueva go to the house of Florencia Quijano during the time you have mentioned, in these five years?
A. Yes, sir.
Q. You have seen him go to this house?
A. I saw him when he went there.
Q. Did he go often or frequently?
A. He only went occasionally.
Q. At what hour of the day was Mr. Villanueva accustomed to go to the house on the occasions that you saw him?
A. Sometimes at sundown I saw Don Mariano enter the gate of the yard around Florencia Quijano's house.
Q. Did you ever see him in the daytime?
A. I never saw him.
Q. According to that then Mr. Villanueva paid his visit at night time?
A. Yes, sir.
Q. Does Mr. Villanueva still go to the house now, at the present time?

Q. They were grown men, were they not?
A. Yes, sir.
Q. This Benito Ignacia, whom you spoke of as living with you as your companion, he had a wife while he was living with you, did he not?
63 A. I do not know if he were married at that time because we lived together here.

BERNABE RANCES, witness for the plaintiff, after having been duly sworn according to law, testified as follows:

Mr. Roco:

Q. Please give your name, age, status, occupation and residence.
A. My name is Bernabe Rances, 37 years of age, a native of Oas, resident of Tabaco, married, and a laborer.
Q. How long have you lived in Tabaco?
A. About thirty years.
Q. Do you know Florencia Quijano?
A. Yes, sir.
Q. What reason have you to know her?
A. Because we are neighbors.
Q. Now?
A. At the present time, no; formerly, yes.
Q. How long were you neighbors?
A. As near as I can calculate, about two or three years.
Q. Can you remember about what year you were neighbors, about what time?
A. I do not remember the year.
Q. Do you know Don Mariano Villaneuva?
A. Yes, sir.
Q. What reason have you to know him?
A. Because formerly he sometimes employed me as foreman of his laborers in discharging freight from the vessel.
64 Q. That was when Mr. Villanueva had his business in Tabaco?
A. Yes, sir.
Q. How far was the house or warehouse that you occupied from the house where Florencia Quijano lived?
A. A little farther than from here to that railing. (The distance is estimated at about 30 feet or more).
Q. Was there any building between the house that you occupied and that of Florencia Quijano?
A. There was no building.
Q. That means to say that from the house where you lived you could plainly see Florencia's house?
A. That is true; yes, sir.
Q. Do you know if there were any sort of relations existing between Mr. Villanueva and Florencia Quijano?
A. I do not know if they had any relations together.
Q. Have you, or have you not, seen Mr. Mariano Villanueva go to Florencia Quijano's house?

Mr. MACMAHON: I object to the question because it does not specify when?

Q. During the time you were neighbors.

Mr. MACMAHON: I object to the question because it does not fix the dates and does not give the defendant an opportunity to refute this sort of evidence.

Mr. ROCO: I will amend the question.

Q. Do you remember more or less what year it was that
65 you were a neighbor of Florencia?

A. I do not remember the year.

Q. Do you know if at any time Mr. Villanueva went to Spain or Europe, before the arrival of the Americans in the province?

A. I was no longer in Tabaco when Mr. Mariano Villaneuva went to Europe.

Q. When did you work for Mr. Villanueva; in the time of the Americans or when the Spaniards were still here?

A. In the time of the Spaniards.

Q. When did you return to Tabaco?

A. When the people returned to Tabaco.

Q. When was that?

A. When the order was issued for the people to return to their towns, or after the reconcentration that was enforced in Tabaco at the end of the operations to suppress brigandage.

Q. When was the time that you and Florencia Quijano were neighbors, after you returned to Tabaco or before?

A. Yes, sir.

Q. And then for two years you were neighbors?

A. Yes, sir.

Q. Do you remember if Mr. Villanueva ever went to Florencia Quijano's house or if you have ever seen him there?

A. I saw him one night going to the house.

Q. What house?

A. Florencia Quijano's.

Q. Do you know if the entered the house?

66 A. He entered.

Q. At about what time did you see him?

A. After eight o'clock.

Q. In the evening?

A. Yes, sir.

Q. Did ever you know Quiteria Buenconsejo?

A. Yes, sir.

Q. How do you know her?

A. Because I live in Tabaco and she lives in Tabaco as well.

Q. You may state, if you know, what sort of relations existed or now exist, between Mr. Villanueva and Quiteria Buenconsejo?

Mr. MACMAHON: I object to the question because the witness has not said that there existed any sort of relations whatever.

Q. Do you know if there existed any sort of relations between Mr. Mariano Villanueva and Quiteria Buenconsejo?

A. I know that Mariano Villanueva has had (sic) — with Quiteria Buenconsejo, but I don't know what sort — relations exist or did exist between the two.

Q. Did you ever see Mr. Mariano Villanueva visit the house of this Quiteria Buenconsejo?

A. Yes, sir.

Q. How was it that you saw him?

A. Once when I was walking along the road Mr. Mariano Villanueva was ahead of me and I saw him enter that house.

67 Q. Was Mr. Mariano Villanueva with you or not?

A. One went ahead of the other; he did not acco-pany me.

Q. Now tell the Court: before coming to testify in this case, did you have any conference with the lawyer who is examining you at the present moment?

Mr. MACMAHON: I object to the question as incompetent. It appears that the attorney is trying to impugn the testimony of his own witness and that is not proper.

COURT: Objection is sustained, because it is evident that the witness must have conferred with his lawyer before testifying.

Q. And in this conference you said, did you not, that on various occasions Mr. Villanueva asked you to accompany him on dark nights to the house of Quiteria Buenconsejo, and that you, after accompanying him, left him there?

Mr. MACMAHON: I object to the question as being incompetent, because it is for the purpose of impugning the testimony of his own witness.

COURT: Objection sustained.

PEDRO VARGAS, witness for the plaintiff, after having been duly sworn according to law, testified as follows:

Mr. ROCO:

Q. Please give your name, age, status, occupation and

68 residence.

A. Pedro Vargas, a native and resident of Tabaco, Albay, 30 years old, married, laborer.

Q. Do you know Don Mariano Villanueva?

A. Yes, sir.

Q. Julio Villanueva also?

A. Yes, sir.

Q. With whom does Julio Villanueva live?

A. With his mother.

Q. What is his mother's name?

A. Florencia Quijano.

Q. Have you had any sort of relations or business with Julio Villanueva?

A. Yes, sir; in the year 1902.

Q. In business in Tabaco?

A. Yes, sir.

Q. Do you know Don Mariano Villanueva?

A. Yes, sir.
Q. Tell the Court have you ever seen Mariano Villanueva in the house occupied by Julio and Florencia?
A. Yes, sir.
Q. Explain to the court the circumstances in which you saw him.
A. One day in 1902 I went to Julio's house to settle our accounts; on arriving at the house aunt Florencia showed me into the reception room, and when I went to sit down I turned my head and saw Don Mariano Villanueva sitting on a sofa. Then I saluted
69 him also.
Q. At what time of the day was that?
A. About eight or nine o'clock in the morning.
Q. What kind of a sofa was it on which Mr. Villanueva was sitting?

Mr. MACMAHON: I object to the question as immaterial and irrelevant.

COURT: Objection sustained.

Q. Who was there when you saw Florencia and Mr. Villanueva?
A. Only those two; Florencia was near the window.
Q. What was Florencia doing?
A. She was sewing.
Q. In what position was Mr. Villanueva? Was he seated or lying down?

Mr. MACMAHON: I object to the question as immaterial and irrelevant.

COURT: Objection sustained.
Mr. ROCO: Exception.

Q. Outside of these two persons, was there no one else in the room?
A. There was no one else.

Mr. MACMAHON:

Q. Was not Julio there?
A. He was not there because his mother told me he was out.
Q. What date was it that you were there?
A. I do not remember the date or the month, but I recall that it was in the year 1902.
70 Q. You say that you had business with Julio: what kind of business did you have with Julio?
A. I got money from Julio and gave him five per cent interest monthly for it.
Q. This was the only business you had with him?
A. Yes, sir: I used the money I got from him in business.
Q. So that only you and Julio knew of these transactions?
A. Yes, sir.
Q. Are you a nephew of the plaintiff?
A. Yes, sir; but a distant one.
Q. Are you the same Pedro Vargas that was prosecuted before this court in criminal case No. 1023?

A. No, sir; I am not the one.
Q. Are you the same that was prosecuted in criminal case No. 1045 in this Court?
A. No, sir.
Q. These cases were for the infraction of Act No. 1480, in the matter of cockpits.
A. Ah, about cockpits, yes, sir.
Q. You had to pay a fine?
A. Yes, sir.

Mr. MACMAHON: We ask the Court to strike the testimony of this witness from the record because he has not fixed the dates in such manner that will admit of a defense.
Mr. ROCO: The witness has said that it was in the year 1902, although he has not given the month or day.
COURT: Motion denied. One can not expect a person to
71 give the exact days and months on which certain events took place so long ago. If he did so it would be a reason for doubting the truth of his testimony.

EMILIANO ORTIZ, witness for the plaintiff, after having been duly sworn according to law, testified as follows:

Mr. SIERRA:

Q. Please give your name, age, status, occupation and place of residence.
A. My name is Emiliano Ortiz, a native and resident of Tabaco, 33 years of age, married, and a merchant.
Q. How long, more or less, have you been a resident of Tabaco?
A. A long time, about——
Q. More or less, how long?
A. I was born here; I have always lived in Tabaco.
Q. Do you know the defendant in this case, Mr. Mariano Villanueva?
A. Yes, sir.
Q. Do you know the woman named Florencia Quijano?
A. Yes, sir.
Q. Where does this woman live now; in what pueblo?
A. In Tabaco.
Q. Is your house near or far from that of this woman? What relation is there between them?
A. There is a college in between and it is as far as from here to the church or so.

72 Mr. SIERRA: We have no more questions to ask this witness.

RAMON MORALES, witness for the plaintiff, after having been duly sworn according to law, testified as follows:

Mr. Roco:

Q. Please give your name and other data.
A. My name is Ramon Morales, a native of Manila and resident of Tiwi of this province, 44 years of age, married, a merchant.
Q. Where so you live now?
A. In the town of Tiwi.
Q. Before living in Tiwi, where did you reside?
A. In Tabaco.
Q. For how long?
A. From 1891, when I went to Tabaco as telegraph operator in the service of the Spanish Government, until the month of April in the year 1902, when I went to Tiwi, and where I now reside.
Q. Are you related in any manner to the parties in this suit?
A. Yes, sir.
Q. How?
A. I am married to a daughter of the plaintiff by the defendant.
Q. What is this daughter's name?
A. Cándida Villanueva.
Q. How long is it since you married Cándida Villanueva?
A. I married her who is now my wife, on the 18th of
73 February of 1895.
Q. And before marrying her did you already know Mr. Villanueva?
A. Yes, sir.
Q. Were you on friendly terms with him?
A. Somewhat.
Q. What amount of confidence was there between you and Mr. Villanueva, even before you married his daughter?
A. We were on very intimate terms.
Q. Do you know Quiteria Buenconsejo?
A. Yes, sir.
Q. Where does she live?
A. In Tabaco.
Q. You have known her ever since you came to Tabaco?
A. I knew her before I was married.
Q. Do you know if this Quiteria Buenconsejo has had any sort of relations with Mr. Mariano Villanueva?
A. Yes, sir.
Q. What sort of relations?
A. Quiteria Buenconsejo was the mistress of Mr. Mariano Villanueva.
Q. What reason have you for saying that?
A. Because when I was a single man I used to call on her family; Quiteria had an unmarried sister.
Q. Who did you say had a sister?
A. Mr. Villanueva's mistress.
Q. Did you go to the house very often?
A. Yes, sir; quite frequently.

Q. You saw Mr. Villanueva there?

74 A. Yes, sir; a couple of times.

Q. Have you knowledge of any other fact upon which to base your statement that Quiteria Buenconsejo was the mistress of Mr. Villanueva?

A. Yes, sir; first by the children that I know they have had, and besides, sometimes when I went there, as there was no other room in the house, they put up a screen in the sala (living room) when Mr. Villanueva called.

Q. But do you positively know that Mr. Villanueva has had children with this Quiteria?

A. Yes, sir.

Q. How many?

A. Four.

Q. What are their names?

A. Maxima, Fortunato, Balbino and Emeteria.

Q. Where are they now, these children of Mr. Villanueva and Quiteria?

A. They are with an illegitimate daughter of Mr. Mariano Villanueva named Melania, who is married to Doctor Salcedo.

Q. Do you know who it was that took these children away from their mother?

A. Mr. Villanueva.

Q. Can you explain the circumstances under which Mr. Villanueva took his children away from Quiteria?

A. Well, it was in or about the year 1903, when Mr. Mariano Villanueva moved to Manila for a season in company with

75 his family, that is to say the family which he had with him, and which was composed of legitimate and illegitimate children, that these others were taken from their mother's house and put on the boat.

Q. Did Mr. Villanueva say anything to you about these children of Quiteria?

A. Yes, sir; he told me that they were his.

Q. How did he treat these children of Quiteria before he took charge of them?

A. He treated them just like his children.

Q. Do you know if these relations still subsist between Mr. Mariano Villanueva and Quiteria Buenconsejo?

A. No, sir; it seems not.

Q. Do you know approximately when they severed these relations?

A. After Mr. Villanueva returned from Europe in 1901. I learned or heard that the relations were finished on account of his having learned that the woman had been unfaithful to him.

Q. What other persons lived in Quiteria's house?

A. Her mother, an unmarried sister, a widowed sister and a brother.

Q. Can you tell the court if the house had a good reputation or not?

A. Its reputation was somewhat doubtful.

Q. Do you know a certain Vicenta Buenaflor?
A. No, sir; not the mother, but I know the daughter.
Q. Where is the daughter of Vicenta Buenaflor?
76 A. In Mr. Villanueva's house.
Q. Why is the daughter of Vicenta Buenaflor in Mr. Villanueva's house?
A. When her mother died he took her in and cared for her like a daughter.
Q. Do you know if he took care of her without any special reason, or why?
A. Like a daughter.
Q. What is her name?
A. Maria.
Q. And do you know who it was that went and got this Maria, daughter of Vicenta Buenaflor?
A. Mr. Villanueva himself.

Mr. MACMAHON:

Q. When did Vicenta Buenaflor die?
A. I cannot say for certain, but I think it was at the beginning of the American occupation.
Q. And it was then that he took charge of the daughter—what is her name?
A. Maria; yes, sir.
Q. She is now of age?
A. Yes, sir.
Q. Has this Maria lived in Mr. Mariano Villanueva's house since that time until now?
A. Yes, sir; ever since her mother died.
Q. Did Mariano Villanueva's wife, the plaintiff here, know of this?
A. I will tell you; the cause of their troubles commenced then, when this child was taken in. It was then that the troubles
77 of the spouses recurred.
Q. Please answer the question. Did the plaintiff know of it or not?
A. I do not know.
Q. But has Maria lived in the house since that time until now?
A. Yes, sir.
Q. Did the plaintiff live there also?
A. Sometimes, because she did not always stay at the house, almost since the time of the Government, the beginning of American occupation; although it is true that at times she went to the house because she has an unmarried daughter there and naturally, as a mother, she went to see her daughter. But the major part of the time she lived in the house of her children, and what time the old lady went to Mariano Villanueva's house, she never entered their room; they did not invite her to eat nor did she sit down to the table.
Q. Were you there a long while?
A. Yes, sir; mostly on account of my little business I frequently

go to Tabaco and I always sleep at the house. I went to Tabaco two or three times a week.

Q. In spite of the fact that you have your business in Tiwi, and that your family is also in the town of Tiwi, you went to Tabaco and stayed there overnight two or three times a week?

A. Yes, sir.

Q. You went nearly three times a week?

78 A. Yes, sir; the towns are not very far apart, and as Mr. Villanueva's house was that of my wife's family, I always slept there.

Q. How far is it from Tiwi to Tabaco?

A. With a horse and carromata, an hour and a half.

Q. Is it not true that the roads were formerly very bad?

A. Yes, sir; but even so one went in an hour and a half.

Q. The roads are good now?

A. Pretty good, according to the seasons.

Q. And you frequently went in a carromata?

A. Sometimes I went on horseback, sometimes in carromata, at others on a carabao, and again in a boat, by sea.

Q. When did you marry?

A. I have already stated that I married on the 18th of February, 1895.

Q. From that time up to the present, you have not returned to the house of Quiteria Buenconsejo?

A. No, sir.

Q. It was before that time that you saw Mr. Villanueva in that house?

A. Yes, sir; when I arrived in Tabaco, being a bachelor, I saw Mr. Villanueva in that house, from 1891 until the year '94, when i ceased to go to the house, because I married in '95.

Q. And when you went so frequently to Mr. Villanueva's house, from 1900 until now, were you on friendly terms with Mr. Mariano Villanueva?

A. Yes, sir; very friendly.

Q. But now; you no longer go to the house?

79 A. I will tell you; the last time I went to the house was on the 5th of May, 1910, and I do not go there, or I have not returned since, not exactly because Mr. Villanueva has offended me. On the contrary this affair grieved me very much and precisely because I was grieved over it, and because I wanted to intervene to fix up the marital troubles, on that day I went to Mr. Villanueva's house. But that gentleman received me very coldly, and on account of the reception he gave me, I refrained from going to the house, because, precisely, that time I went to the house——

COURT: We do not want any more of that; that is sufficient.

Q. Is it not true that the disputes you have had with Mr. Villanueva have been over money, because you asked him for it and he would not give you any more?

A. I have never asked him for any. I do not know about his daughter.

Q. His daughter?
A. Yes, sir.
Q. That is to say, your wife?
A. I will tell you. In Tiwi some land that was for sale was offerred us; as it lay alongside my own my wife wanted to ask her father for some money, but I said that was foolish because he would not give it to us. However, my wife said it would be better to ask it of him instead of asking others so we sent him a guarantee of P7,000, and in the letter we wrote we said that the title deeds might be made out in his name.

80 Q. We don't want any tales: that is enough. Is it not true that since the year 1904 you have written several letters to Mr. Villanueva asking him for money?
A. Yes, sir.
Q. And is it not true that he granted your requests until he had given you four hundred odd pesos?
A. Yes, sir; but part of that sum——
Q. And is it not true that lately he has refused to give you any more money?
A. Yes, sir; but these disputes——
Q. And is it not true that in a letter dated the 31st of March, 1910, she asked for money and Mr. Villanueva would not give it?
A. In his answer he told us that he could not give any money because he had not yet been able to pay D-. Salcedo.
Q. Therefore you became very angry with Mr. Villanueva, didn't you?
A. No, sir.
Q. You didn't like that he should pay Dr. Salcedo, did you?
A. No, sir; it did not offend me.
Q. Is it not true that as he would not give you any more money you advised the defendant here to leave the house and bring an action against Mr Villanueva?
A. No, sir; nothing of the sort.
Q. When was the first time that you spoke of what you saw in the house of Quitera Buenconsejo?

A. I have already told that I could not say for sure. It
81 was so many years ago that I cannot give the exact date, nor the year nor the month. But there we met, for I also used to visit the house because there was a girl there.

Q. But have you kept this a secret all this time?
A. It is not a secret, because everybody in Tabaco knows it. It is of public knowledge.
Q. Did you keep it a secret or did you tell anyone?
A. Yes, sir; I kept the secret.
Q. And only just now you have told it?
A. Yes, sir; because I have sworn before the judge to tell nothing but the truth.
Q. Then how is it that your attorneys know it?
A. Because I told them.

Mr. Roco:

Q. (Showing the witness Exhibit "C.") Do you know this?
A. Yes, sir.
Q. For what reason do you know it?
A. Because it is signed by Don Mariano.
Q. Did this document ever fall into your hands; was it ever in your possession?
A. Yes, sir.
Q. Where did you get it from?
A. It was found in an empty shoe box after Mr. Villanueva left for Spain.

Mr. Roco: We offer in evidence this document, marked Exhibit "C" of the plaintiff, which was sent by the defendant, Mariano Villanueva, to his daughters Isidora, Melania and Toribia, as
82 appears in the letter itself.

Mr. Macmahon:

Q. Where — you say that this letter was found?
A. In an empty shoe box, in Mr. Villanueva's room, which was then occupied by his son Marianing.
Q. How were you able to get hold of this letter?
A. I did not find the letter; it was Marianing who was then occupying the room. One day after the defendant Villanueva had gone he was cleaning the room and found this letter in a shoe box and then he showed it to me.
Q. It was Marianing then who opened the desk?
A. No, sir; it was not the desk. I have already told you that it was found in a shoe box, under the wardrobe.
Q. Locked?
A. No, sir; there was no key.

Court: Exhibit "C" of the plaintiff is admitted.
Mr. Roco: The plaintiff is through with her witnesses. We desire to again announce to the court that as soon as we receive the affidavits that we expect from Manila, we will present them to the court, and we reserve the right to offer them in evidence.

Evidence of the Defendant.

Juan Pedro Barranechea, witness for the defendant, after having been duly sworn, testified as follows:

Mr. Macmahon:

Q. Please give your name, age, status, occupation and residence.
83 A. My name is Juan Pedro Barranechea, a Spaniard, resident of the municipality of Tabaco in this province, 29 years of age, married, and a clerk by occupation.
Q. Do you know the parties litigant here?
A. Yes, sir.

Q. How long have you known them?
A. For thirteen years.
Q. Did you frequent their house?
A. Yes, sir.
Q. During these last thirteen years have you seen the wife of Mr. Villanueva, the plaintiff here, named Teodora, in Mr. Mariano Villanueva's house?
A. Yes, sir.
Q. Often?
A. Yes, sir.
Q. What did she do there; how did she act? Like a mother of a family?
A. Yes, sir.
Q. Were there any persons there named Felix, Toribia and Maria?
A. Yes, sir.
Q. How did the plaintiff treat those persons named Melanie, Felix, Toribia, etc.?
A. I always saw her treat them like members of the family; as though they were her own children.
Q. She gave them her hand to kiss like the rest?
A. Yes, sir.
Q. What was the last time that you saw her give them her
84 hand to kiss?
A. To Toribia in 1910.
Q. Where?
A. In the cinematograph.
Q. In public?
A. Yes, sir.
Q. To whom?
A. To Toribia and Isidora.
Q. The same to both of them?
A. Yes, sir.
Q. In the cinematograph?
A. Yes, sir.
Q. This was in the month of July, 1910.
A. Yes, sir.

Mr. SIERRA:

Q. How many times did you go to the house of Mr. Villanueva in the year 1910?
A. Two or three times.
Q. Two or three times during the whole of the year?
A. No, sir; two or three times in July.
Q. On the occasion of the two or three times that you went there did you meet the plaintiff?
A. Yes, sir.
Q. What was the last time that you were in Mr. Mariano Villanueva's.
A. I do not remember.
Q. Was it toward the end of the year 1910?

85 A. At the beginning.

Q. So that all the times you went were in the early part of 1910?

A. Yes, sir.

Q. Previous to what month?

A. I do not remember.

Q. At what hour of the day did you go?

A. I always went at night time.

Q. Did you remain in the house a long while when you visited it?

A. Half an hour or an hour.

Q. How many times did you go previous to the year 1909?

A. I do not remember.

Q. Can you not state exactly how frequently you went? Can you or can you not?

A. No, sir; I can not.

Q. Can you affirm that you met the plaintiff here every time you went there?

A. No, sir; I did not always meet her.

Q. Can you state exactly what times you met her and what times you did not?

A. No, sir.

Q. Do you know that frequently, at certain periods, this lady left Mariano Villanueva's house to go to live with some one or another of her children?

A. Yes, sir.

Q. And you also knew that these absences were for very long periods?

A. At times they were.

86 Q. On the occasion that you saw Toribia kiss the hand of the plaintiff in the cinematograph, was the defendant, Mariano Villanueva there?

A. No, sir.

Q. About what time or date in the year 1910 was it that you saw the occurrence in the cinematograph that you have related?

A. In July.

Q. You know that this suit had been already commenced?

A. Yes, sir.

Q. And after the commencement of this action you saw the plaintiff in the house of the defendant, Mariano Villanueva?

A. No, sir; I did not see her in July, 1910.

Q. You remember that about the end of April in the year 1910 there was a big dance given in Mr. Villanueva's house on the occasion of the visit of Judge Trent to Tabaco?

A. Yes, sir.

Q. Did you go to that dance?

A. Yes, sir.

Q. Do you not know that the absence of Villanueva's wife and all his legitimate children caused comment, and that only Villanueva's illegitimate children were there?

Mr. MACMAHON: I object to the question because it is
87 immaterial and irrelevant.

COURT: Objection overruled.

Mr. MACMAHON: Exception.

A. I remember that she was not there.

Q. You remember that the plaintiff was not there?

A. Yes, sir.

Q. You remember also that none of the legitimate children were there, do you not?

A. I don't think that any of them were there.

Q. Do you also remember that fact was commented upon that night by the guests?

A. I am not aware of that.

Q. And also on the following days?

A. I am not aware of that.

Mr. MACMAHON:

Q. How many of the plaintiff's daughters are unmarried? Do you know Isidora?

A. Yes, sir.

Q. She is daughter of the plaintiff?

A. Yes, sir.

Q. She still lives with the defendant, does she not?

A. Yes, sir.

Q. Do you remember taking the plaintiff from Tabaco to the Isla de Catanduanes in 1902?

A. Yes, sir.

Q. Who accompanied her?

A. Toribia, Isidora and Julio.

88 Q. Did Mr. Villanueva go?

A. No, sir.

Q. When you returned from Catanduanes, did she return with you?

A. No, sir.

Q. Why?

A. According to what Isidora told me when I asked her, she remained behind to take care of the baby.

Mr. SIERRA: We request to have this statement of the witness stricken out as being hearsay.

COURT: Motion granted, and it is ordered that the answer of the witness be stricken out as being hearsay.

JANUARIO CERTEZA, witness for the defendant, after having been duly sworn, testified as follows:

Mr. MACMAHON:

Q. Please give your name, age, status, occupation and residence.

A. My name is Januario Certeza, a native and resident of Tabaco, 46 years of age, married, and a laborer.

Q. Do you know the parties to this suit?

A. Yes, sir.

Q. Did you work in their house for some time as a servant?

A. Yes, sir.

Q. When?

A. In the year '83.

Q. How long were you there, up to what time?

89 A. I left Mr. Villanueva's in the time of President Santilan de Tabaco. I do not remember the year.

Q. How long did you serve them; how many years, more or less?

A. Eight years, more or less.

Q. Did you see any persons named Felix and Julio arrive there?

A. I saw Julio arrive there.

Q. Did Mrs. Villanueva make any objection when Julio arrived there? Did they have any dispute before the arrival of Julio?

A. No, sir; she acted nicely.

Q. During the time that you worked in the house as a servant, were there any dispute- between husband and wife on the subject of these children named Julio, Felix Melania and Toribia living in or arriving at their house?

A. There was no trouble there.

Mr. Roco:

Q. Do you remember plainly what year it was in which Julio was brought to the Villanueva's house?

A. It was toward the year '83 or '93. I can not remember exactly what year Julio arrived at the house.

Q. Was it still in the time of the Spanish Government or the American Government?

A. In the time of the revolution.

Q. Or before '97 or '98?

A. About then I think but I am not sure.

90 Q. Apart from the time at which Julio went to the house, how many years did you work there?

A. About three years.

Q. Then you left the services of Mr. Villanueva in the time of American Government?

A. I left Mr. Villanueva's house in the time of the Filipino Government, or at the time of the revolution.

DOMINGO DIAZ, witness for the defendant, after having been duly sworn, testified as follows:

Mr. MACMAHON:

Q. Please give your name, age, status, occupation and residence.

A. My name is Domingo Diaz, native and resident of Malinao, 32 years of age, single, and by profession a lawyer.

Q. Do you know the parties in this suit?

A. Yes, sir.

Q. Were you at Mr. Mariano Villanueva's house on the occasion of the celebration of Miss Isidora Villanueva's birthday last year in Tabaco?

A. Yes, sir; I was one of the guests.

Q. Do you remember in what month it was?

A. It was on the 2d of January, 1910.

Q. Was the plaintiff there on that occasion?
A. Yes, sir; Doña Teodora was there.
Q. Did you see her take supper in the house?
91 A. I saw her just as we were sitting down to the table, because some one remarked that there was an empty chair and called to the mother to sit down and take supper with us. She refused, however, because there were other guests at the second table, and the first table would not hold them all.
Q. Did you eat at the house on any other occasion?
A. Yes, sir.
Q. When?
Q. Often, when I was invited by Mr. Villanueva.
A. You have seen the lady eat at the same table there with Mr. Villanueva, and have dealings with the children named Melania, Felix, Toribia and Julio?
Q. On one occasion that I dined there I saw Doña Teodora sit at the table on the right hand of Mr. Villanueva.
Q. And the other persons named as well?
A. At the time I speak of there were only Toribia and Isidora.
Q. These two were the only ones that were present at the dinner?
A. At the dinner they were; I am not sure about the others at the supper.
Q. You have seen Teodora give her hand to Toribia and the others?
A. Yes, sir; all these children, when they meet Doña Teodora, kiss her hand.

92 Mr. Roco:

Q. Have you often dined at Mr. Villanueva's house?
A. I remember that when I received a dinner invitation I went there to dine; when I was invited to supper I also went to sup.
Q. Is it not true that you were surprised to see that Mr. Villanueva and his wife hardly spoke to each other at meal times?

Mr. Macmahon: I object to the question because the witness has not said that, and also because it is asking the witness for his own opinion.
Court: Objection overruled.

A. I have not said that I was surprised.
Q. Answer my question. Is it not true that you were surprised at the dinner you were invited to, to see that Mr. Villanueva and his wife never spoke to each other?
A. I was not surprised.
Q. But it is true that they did not speak to each other any more, is it not?
A. I do not remember if they spoke to each other at the time I dined there, but that they were sitting at table, yes.

Court: The hearing is suspended until tomorrow.

March 9, 1911.

Morning Session.

JOSE SALCEDO, witness for the defendant, after having been
93 duly sworn, testified as follows:

Mr. MANLY:

Q. Please give your name, age, status, occupation and residence.
A. My name is José Salcedo, a native of Manila, resident of Tabaco, 44 years of age, married and a doctor of medicine by profession.
Q. Where do you live?
A. In Tabaco.
Q. What is your profession?
A. Doctor of medicine.
Q. Are you a doctor duly licensed to practice in the Philippine Islands?
A. Yes, sir.
Q. Since when?
A. Since the year 1891.
Q. Have you exercised your profession from that time up to the present?
A. Yes, sir.
Q. Do you know the defendant, Don Mariano Villanueva?
A. Yes, sir.
Q. Since when have you known him?
A. Since the year 1893, in May.
Q. Have you been his physician?
A. Yes, sir; from that time up to the present.
Q. Have you examined him to find out what sickness he has had since that time?
A. Since 1893.
Q. Yes, or subsequently?
94 A. From 1896 until the year 1900 I have always been called upon by that gentleman for slight illness, such as fevers, colds, and so forth.
Q. And in 1900?
A. Yes, sir; because in 1899 he was attacked with acute dysentery. As a result of that, when he became convalescent, he suffered from cerebral anemia and a weakness of the spinal cord. I told him that I was of the opinion that he could not be cured here in this country, that he would have to go to a cold climate so that he would react, and that he should consult other doctors. The surgeon of the American troops was of the same opinion and in Manila, Doctor- Bautista and Oliveros told him the same as I did here, that is to say, that he could not be cured in the Philippines and that he would have to go to Europe. This he did in the year 1900, in the month of June.
Q. Did you accompany him?
A. Yes, sir; we were together for some time.
Q. Do you know if, on arriving in Europe, the defendant was examined by any other doctor?

A. Yes, sir; it was precisely for that reason that Mr. Villanueva went there.

Q. What was the result of his trip to Europe?

A. They diagnosed his case there the same as here.

Q. Was he cured or not?

A. The doctors told him that if he remained there for a long time, perhaps he would be cured, but that he was not to
95 return. So long as Mr. Villanueva stayed in Europe he enjoyed comparatively good health, but shortly after his return to the Philippines his sickness returned again.

Q. You have treated him as physician up to the year 1907?

A. Up to the present time I am attending him as physician.

Q. What did he do in 1907?

A. In 1907, at the beginning of the year, his sickness grew worse, and I again became of the opinion that he should return to Europe to see if he would react and be cured. He wanted to consult other physicians in Manila, which he did. At that time Mr. Villanueva was suffering from facial neuralgia, and the Manila doctors told him that to effect a cure, it would be necessary to operate. I disagreed with that opinion on account of the age of the patient, but as there were two doctors against me their opinion prevailed. However, as Mr. Villanueva was somewhat afraid of the operation, he went to consult a specialist in those diseases, one who had a good reputation, Dr. Lanceró. After consulting Dr. Lanceró the latter said that he ought not to be operated on, because in addition to his age, he was suffering from anemia that the latter could not be cured and would produce bad results. He said furthermore that he could not be cured, and that only by sojourning for a long time in Europe co-ld the disease be alleviated.

Q. Does his sickness still continue?

96 A. Yes, sir, up to the present.

Q. Now, in view of the result of your examination and your experience of his sickness since the year 1900, tell the court if during that period and while this sickness lasted, and taking into account the age and condition of the defendant during this period, if he could or could not perform the carnal act.

A. In my opinion it was impossible, because, to perform the carnal act, health and age are necessary. The age of this individual, and, if we take into account his statements to me that he has been performing the carnal act ever since he was fifteen years old, together with his present infirmity, make it impossible for him to have erections, and at sixty odd years of age I do not believe he could copulate.

Mr. Roco:

Q. Tell us, doctor, according to the experiments and the result of your examinations of the patient, could you say how long this physical impotence that you refer to has lasted?

A. I could not give the exact date; but since about '91 or '92, when serious symptoms made their appearance, because prior to that time he was always sick; he would be two days well and then three days sick and so on.

Q. Is it not true that the second trip Mr. Mariano Villanueva made to Europe was in 1907?

A. Yes, sir.

Q. And the first in 1900?

97 A. Yes sir.

Q. So that this physical impotence that you attribute to Mr. Villanueva dates approximately from 1907, or before?

A. Yes, sir; because it was in 1907 when he was in danger of his life.

Q. Good. Are you married?

A. Yes, sir.

Q. To whom?

A. To Doña Melania Quijano.

Q. Do you know if Melania Quijano is a daughter of Mr. Villanueva?

A. Yes, sir.

Mr. MACMAHON: I object to the question because it is irrelevant and improper.

COURT: It is answered.

Q. Has Florencia Quijano spent long periods in your house?

Mr. MACMAHON: I object to the question because it is immaterial and irrelevant.

COURT: Objection sustained.

Mr. ROCO: Exception.

Q. Did you constantly accompany Mr. Villanueva while he was on his trip to Spain?

A. There were two trips. Which of them?

A. The first.

A. No, sir; we were companions on the voyage only until we reached Spain.

Q. And in Spain; were you constantly with him?

98 A. Yes, sir; at one time for two or three months, I don't remember precisely, I stayed with him, just like a friend.

Q. And can you categorically assure the Court that, during all the time you have mentioned, that is to say from the year 1907, the defendant was unable to perform any carnal act?

A. Materially I could not say that he could not; but as a medical man I am almost sure that he could not perform the act.

Q. But still, within that possibility, you think that he might have performed some carnal act?

A. I do not think so; he may have had the idea, but in my opinion it was impossible for him to have performed the act.

Q. Did he remain in bed?

A. When?

Q. In that interval of time; from then, in 1907, until now?

A. Many weeks and months.

Q. Is it not true that the defendant Mariano Villanueva had made frequent trips, both to Manila and to Legaspi?

A. Yes, sir.

Q. And he was able to walk by himself?
A. Yes, sir.
Q. Could the defendant Mariano Villanueva perform his customary work during all this time?

A. I do not know what customary work he has to do, be-
99 cause his son Don Pedro Villanueva does all the work.

Q. When did this Don Pedro Villanueva cease to be the representative of his father?
A. I do not know, because he was his representative in the year 1907, but in June, 1908, when I returned here, he was so no longer.
Q. And since the time Don Pedro Villanueva ceased to be the representative of his father, Mr. Mariano Villanueva looks after his own affairs?
A. Mr. Villanueva has no affairs, and what few he has are attended to by a clerk.
Q. But he directs him?
A. I do not see him.
Q. Then do you direct him?
A. No, sir.
Q. Do you mean to say that the affair-, the business of Mr. Villanueva, were abandoned since the year 1908 and so continue to be up to date?

Mr. MACMAHON: We object to the question because it is immaterial.
COURT: Objection overruled.

A. I do not know what business he has.
Q. Pertaining to his own interests?
A. I think so.
Q. He still directs them?
A. Yes, sir.
Q. At the present time he continues to do his customary work?

A. Yes, sir.
100 Q. Can you tell the court how often, more or less, since the year 1907 until the present time, Mr. Villanueva has been confined to his bed on account of his sickness?
A. I visited him about twice a month for the past four years, that is to say he has been confined to his bed some forty odd times.
Q. And at these times that he took to his bed, he was not so ill as to be in danger of his life, was he?
A. Sometimes he was so ill that I proposed to hold a conference of doctors, but the patient always refused.
Q. With whom did you hold this conference?
A. No, sir; the patient refused.

Mr. MANLY:

Q. Tell us, Doctor Salcedo, in view of your testimony and the condition of the defendant Mariano Villanueva during the period after his return from Spain in 1901 until the year 1907 and the present time, could he at any time have performed any carnal act?
A. I have said that after the year 1901 he could not have done so,

because hardly had he returned from Europe when his sickness returned. He might have had thoughts, but it was impossible for him to have performed the acts, because the sickness from which Mr. Villanueva suffered prevents the patient from having erections, and it is well known that in order to cohabit a man must have an erection.

101 Mr. Roco:

Q. But in any case, you are of the opinion that if he was physically unable to cohabit with a woman, it was from the year 1907 forward, was it not?

A. No, sir; from the year 1901, on, because hardly had he returned from Spain when his sickness recurred.

Q. You saw him in Spain and were with him?

A. Yes, sir; I was at his house in Barcelona.

Q. And he was in good health during the time he was in Spain? Is it not true that he went to houses of ill fame?

A. Oh, I can not say. Mr. Joaquin Tomas can; he was with him.

Q. Good, but can you swear that Mr. Mariano Villanueva, from the year 1901 until the year 1907, in all this interval of time, never performed any carnal act?

A. I can not swear to what I have not seen.

RAMON MORALES, recalled to the stand, now as a witness for the defendant, and under the same oath already taken, testifies as follows: (Follows his personal circumstances as shown in his previous testimony).

Mr. MANLY:

Q. Have you a daughter named Luz?

A. Yes, sir.

Q. Who was the godfather at the baptism of this child
102 of yours?

A. I can not say at this time; the baptismal certificate only the name of the godmother appears, which is Telesfora Ante.

Q. Was not a man named Felix, who is mentioned in this complaint the godfather of your daughter?

A. I can not say, because in the baptismal certificate——

Q. Please answer the question whether or not the said Felix was the godfather of your daughter. I know what I am asking, and you ought to know as you are the father of the child.

A. I do not think he was the godfather because only Telesfora Ante appears as the godmother.

Q. Have you a son named Trent, in honor of the late judge of this district, the Hon. Grant Trent?

A. Yes, sir.

Q. In what year was he baptized?

A. In the year 1907.

Q. Was it not in the year 1908?

A. I do not remember the date very well; I can not fix it exactly but I think it was in 1907.

Q. Who was the godmother of this boy?
A. Well, the true godparents were the Hon. Judge Trent and his wife, but as they were not able to be in Tabaco on that date Toribia Villanueva and another appeared to represent the true godparents.
Q. This Torbia, is she the person mentioned in the complaint as daughter of Florencia Quijano?
103 A. Yes, sir.
Q. Was her mother in law, the plaintiff in this suit, present at these baptismal ceremonies?
A. Yes, sir.
Q. Do you know the daughter of Rafael Villanueva that is named Soledad?
A. Yes, sir.
Q. Were you present at the baptism of this daughter of Rafael?
A. No, sir.
Q. Do you know who was the godmother of this girl?
A. No, sir.
Q. Or that of the other girl named Remedios?
A. Neither.
Q. Of Pedro?
A. Neither.

Mr. Roco: We have no further questions to put.

P. MARIANO BAÑES, witness for the defendant, after having been duly sworn, testified as follows:

Mr. MACMAHON:

Q. Please give your name, age, status, occupation and address?
A. My name is Mariano Bañez; I am a native of Bacacay, a resident of Malinao, 63 years of age, priest.
Q. Do you know the parties litigant in this case?
A. Yes, sir.
Q. Where you born in this province?
104 A. Yes, sir.
Q. Have you always lived here?
A. Not always, because, as I am a priest, I am sometimes sent to Sorsogon and at other times to Nueva Caceres.
Q. But you spend the greater part of the time here in Albay?
A. About half of it.
Q. Were you ever the parish priest of the municipality of Tabaco, in this province?
A. Yes, sir; in the year- 1891 and 1892.
Q. Do you know the entire family of Mr. Mariano Villanueva?
A. Yes, sir.
Q. Do you know the persons named Melania, Felix, Julio and Toribia that live in his house?
A. Yes, sir.
Q. When you were the parish priest of Tabaco, did you dedicate a chapel on the grounds of Mr. Villanueva?
A. Yes, sir, I blessed it.

Q. And on that occasion, was the whole of the family of Mr. Villanueva present at the place where the chapel was erected?
A. Yes, sir.
Q. Did you remain there for some time?
A. I spend the night there.
Q. On that occasion, at that ceremony, was the plaintiff here, Doña Teodora, present?
A. Yes, sir.
Q. And all the children mentioned?
A. Yes, sir.
105 Q. And Mr. Villanueva?
A. Also.
Q. While you were parish priest of Tabaco, or after leaving there, did you ever visit the house of these spouses?
A. I seldom went to their house because I left Tabaco and lived in other towns; but when I could, I went to visit them.
Q. When you went to the house, did you notice Mrs. Teodora's manner of treating Melania, Felix, Julio and Toribia?
A. Yes, sir.
Q. How did she treat them?
A. They acted as children and she as a mother.
Q. Did she always give them her hand to kiss?
A. Yes, sir.
Q. Do you know the meaning of this custom of giving the hand to kiss?
A. The custom of kissing the hand signifies the respect and affection of children.
Q. Is this custom of kissing the hand usual among all, or only among intimates?
A. Parents offer their hands to be kissed by their children only, not to strangers. It is a custom of this country.

TOMAS ALMONTE, witness for the defendant, after having been duly sworn, testified as follows:

Mr. MACMAHON:

Q. Please give you- age, name, status, occupation and
106 address?
A. My name is Tomas Almonte, a native and resident of Tabaco, 45 years of age, married, a property owner.
Q. Do you know the parties to this suit?
A. Yes, sir.
Q. Are you a resident of the town of Tabaco?
A. Yes, sir.
Q. How many years have you resided in this town of Tabaco?
A. Ever since I was born; up to the present time.
Q. Have you ever visited the house of the parties to this suit?
A. Yes, sir.
Q. You have seen Doña Teodora there?
A. Yes, sir.
Q. The mother?

A. Yes, sir; Doña Teodora, the wife of Don Mariano.
Q. Have you seen how this Doña Teodora treated the persons named Melania, Felix, Julio, Toribia and the other named Maria?
A. Yes, sir.
Q. You have seen how the- behaved toward each other, the mother and the persons mentioned?
A. I saw how they acted.
Q. How did they treat each other?
A. Like members of a family.
Q. Did she give these persons her hand to kiss?
A. Yes, sir.
Q. As though they were her own children?
107 A. Yes, sir.
Q. What is the meaning of this custom of offering the hand to be kissed?
A. In the Philippines, it is a sign of respect among persons who are related to each other.

Mr. Roco:

Q. Among the children that you have mentioned, was there one named Maxima?
A. I did not mention her; it was Mr. MacMahon who mentioned her.
Q. The question asked you was: if this Maxima was among the children that were in the house of the defendant?
A. It seems to me that I saw her.
Q. Are you sure of it?
A. I said that it seems to me that I have seen her.
Q. But are you sure or not?
A. I am not sure.
Q. Now recall if you have seen this Maxima in the house of Doña Teodora or in that of Dr. Salcedo.
A. I always see her now in Dr. Salcedo's house.
Q. But is it not true that the Maxima regularly lives and stays in Dr. Salcedo's house?

Mr. Macmahon: Nothing that refers to this Maxima appears on direct examination; I mentioned her, but afterward withdrew the question.
Mr. Roco: If the name of this Maxima is withdrawn, we withdraw our questions.

108 Dr. Shamon Richmond, witness for the defendant, after having been duly sworn, testified as follows:

Mr. Manly:

Q. Please give your name, age, status, birthplace, address, occupation and domicile.
A. My name is Shamon Richmond, a citizen of the United States, resident of Albay, 35 years of age, single, by profession a doctor of medicine.

Q. Are you a doctor duly licensed to practice your profession in the Philippine Islands?
A. Yes, sir.
Q. Here in the Province of Albay also?
A. Yes, sir.
Q. Since when have you exercised your profession as a doctor?
A. Since 1897.
Q. Continually, since that time until the present?
A. Yes, sir.
Q. Do you know the defendant, Don Mariano Villanueva?
A. Yes, sir.
Q. Have you had an opportunity to examine him as to his physical condition?
A. Yes, sir.
Q. Have you examined the defendant, Don Mariano Villanueva?
A. Yes, sir.
Q. Did you find him to be suffering from any sickness or not?
A. Yes, sir.
109 Q. Given the condition in which you found the defendant, Mr Mariano Villaneueva, after your examination, and taking into account his physical condition, age, and other circumstances involved, tell the court if, in your opinion, he can perform the carnal act.

Mr. SIERRA: We protest against the question because it tends to establish a defense that was not set up in the answer, and it can not be sustained under a simple general denial of the complaint.
COURT: The court is of the opinion that in a general denial, defenses of this sort are included, so for that reason the objection is overruled.
Mr. SIERRA: Exception.

A. I am of the opinion that he is not able to have such relations.
Q. And taking as a basis that since 1900 or 1901 he has been suffering from this infirmity, that is to say cerebral anemia, from that date until now, and taking also into consideration all the circumstances of his age, together with the said infirmity, from 1901 until the present date, could he have performed the carnal act during this period of time?

Mr. SIERRA: We object to the question because the witness has not said when he examined the defendant, nor on what date the defendant contracted his illness, nor even what infirmity he suffers from.
110 COURT: Objection overruled.
Mr. SIERRA: Exception.

A. Being in this condition I think it would be impossible; if his sickness has lasted that length of time, I think it is impossible that he should have had carnal relations.

Mr. SIERRA:

Q. Is it a necessary consequence of cerebral anemia that the patient can not perform any carnal act?

A. No; but he suffers from another disease.

Q. So that, if his sickness that dated from 1901 until the present date, had been cerebral anemia alone, it would not be an absolutely necessary consequence that he could not perform a carnal act?

A. As I understand, cerebral anemia would be sufficient to prevent these carnal relations.

Q. Would the disease of cerebral anemia, in a person of the age of the defendant, lasting constantly since the year 1901, permit him to be in the state of health which the defendant enjoys at the present time?

A. I think so.

Q. Do you think that at the age of the defendant, he could resist suffering for a period of nine years from cerebral anemia, without being completely exhausted, without being almost emaciated by his illness?

A. Yes, sir.

Q. Do you think that during these nine years this disease of cerebral anemia, did not have its periods of improvement and
111 relapse, or do you think that it was always the same?

A. Sometimes he will have been a little better, sometimes a little worse.

Q. Would a patient who was suffering from cerebral anemia, on those occasions when he was feeling better, be able to perform the carnal act?

A. In his case, I think not, sir.

Q. Have you examined the defendant?

A. Yes, sir; two days ago.

Q. Before that, had you not examined him?

A. As a doctor, no, sir.

Q. So that you are not sure that he has been suffering from this disease since the year 1901?

A. No, sir.

Q. The opinion which you have given as to his condition is based upon the examination you made as a doctor two days ago, is it not?

A. Yes, sir.

Q. Did anybody give you any information as to the previous condition of Mr. Mariano Villanueva?

A. Yes, sir; he himself.

Q. So that your opinion is also based upon the information which you have received from the defendant with respect to his health?

A. Yes, sir; I also remember to have talked with Dr. Salcedo in Tabaco.

Q. Do you know that Dr. Salcedo is the son in law of the
112 *the* defendant?

Mr. MANLY: We object to the question because it is immaterial.

COURT: Objection overruled.

A. I believe so.

Q. When you talked with Mr. Salcedo in Tabaco, was it about some special examination that you made of Mr. Mariano Villanueva?

A. No, sir.

Q. According to that, then, the conversation between you and Dr. Salcedo was merely a private one?

A. Yes, sir.

Q. Can you remember how many months, more or less, it was, since you had this conversation with Dr. Salcedo?

A. About four or five months.

Q. What was the reason that the conversation that you had with Dr. Salcedo turned upon Mr. Villanueva's state of health?

Mr. MANLY: We object to the question as being immaterial.

COURT: Objection sustained. The conversation was not a medical conference; they talked as private persons.

Mr. SIERRA: Exception.

Mr. MANLY:

Q. Taking into consideration the condition of the defendand on the date you made the examination you refer to, his age, his sickness, and all the circumstances involved in his particular
113 case, could he, in your opinion, have performed the carnal act during these last years?

A. I think not.

Q. He has not been able to for several years?

A. I think not.

Mr. SIERRA:

Q. Taking into consideration the condition of the defendant, as has been said, of the defendant Mr. Mariano Villanueva, when do you think he was last able to perform the carnal act, approximately?

A. I have personally known Mr. Mariano Villanueva for some years, and he has always been very old, older that his years. I understand that he has not been able to perform such an act for years.

Q. So that you think that Mr. Mariano Villanueva has not been able to perform the carnal act for from four to six years or thereabouts?

A. I think so.

MARIANO P. VILLANUEVA, the defendant in this case, after having been duly sworn, testified as follows:

Mr. MACMAHON:

Q. Please give your name, birthplace, residence, status, age, occupation and domicile.

A. My name is Mariano P. Villanueva, a native of Binondo, Manila, resident of Tabaco, Albay, 66 years of age, married, property owner.

Q. You have heard the testimony of the witness Maria,
114 who called herself the widow of one Ignacio, to the effect that on one occasion in the year 1908, you came from the house of one Florencia Quijano, accompanied by Florencia Quijano, and that you went with the two of them to the beach of the town of Tabaco; was that true or not?

A. No, sir.

Q. Were her other statements, in which she said that she had seen you at various times go to Florencia Quijano's house within the past four or five years, true or not?

A. It is a falsehood.

Q. Simply tell us if it was true or not.

A. It is not true.

Q. You have heard the testimony of the witness Pedro Vargas to the effect that in the year 1902, he saw you in Mrs. Florencia Quijano's house. Is that true?

A. No, sir.

Q. Did you ever, on any occasion, or at any time, confess to the witness Joaquin Tomas that Florencia Quijano was your concubine, and that the various children named Melania, Felix, Julio and Toribia were yours?

A. No sir.

Q. Did you make a similar confession with regard to the woman Quiteria Buenconsejo and her children?

A No, sir. He knew that they were my children because they were in my house, and he also lived in my house.

115 Q. But did you make such a confession to him?

A. No, sir.

Q Have you been suffering from any illness for the past years?

A. Yes, sir.

Q. Since when?

A. Since the year 1900 when the Americans came and we were reconcentrated in Ligao. On my return I was sick, so the doctors advised me to go to Europe.

Q. From that time up to the present you have been suffering from this infirmity?

A. Yes, sir; from neuralgia.

Q. As a result of that sickness, your age and your physical condition, have you been able to perform the carnal act, or would your member rise from the year 1900 until the present time?

Mr. SIERRA: We object to the question because the witness does not testify as an expert, and therefore should only testify as to facts.

COURT: Objection overruled.

Mr. SIERRA: Exception.

A. No, sir; I have experienced desires but was not able to consummate them.

Q. You were not able to perform the act?

A. No, sir; although I wanted to I could not, because the member would not operate.

Q. It would not rise any more during that time?

A No, sir.

116 Q. Who was the last woman with whom you had carnal relations?

A. When we were in Ligao, the last time with my wife.

Q. And she is the only woman with whom you have had carnal relations? She was the last?

A. Yes, sir.

Q. Has your son Pedro another daughter named Remedios?
A. Yes, sir.
Q. Who was her godfather at the baptism?
A. One of the illegitimate children.
Q. What is his name?
A. Felix.
Q. Felix or Julio?
A. Julio.
Q. Has your son Rafael a daughter named Soledad?
A. Yes, sir.
Q. Who was her godmother?
A. My illegitimate daughter Melania.
Q. Have you had Melania, Teodoro, Felix, Julio, Toribia and Maria in your house for a long time?
A. Yes, sir.
Q. That was with the knowledge and consent of your wife?
A. Yes, sir; if she had not had any knowledge of it I could not have taken them there.
Q. When did your wife leave your house; in the year 1910?
A. At the end of January.
Q. Of 1900?
A. Yes, sir; she left because she was with a son of mine
117 named Villanueva, and moreover after leaving the house in the month of January, 1910.
Q. You have a son named Pedro?
A. Yes, sir.
Q. You have had trouble with him these last years since you returned in 1908.
A. Yes, sir.
Q. You have a son named Rafael?
A. Yes, sir.
Q. Have you had trouble with him during these last two years?

Mr. Roco: We object to the question as immaterial and incompetent; it concerns persons that are not parties to this suit.
Court: The question is allowed.

Q. Do you know if on account of these troubles someone has sought to influence your wife to leave your house and bring an action?

Mr. Roco: We object to the question as being incompetent and immaterial.
Court: From the testimony adduced so far in this court, it appears that there must have been some reason of this sort to induce persons of the age of the parties litigant to bring actions of this nature. In view of that the court will permit questions such as those objected to — be put. The objection is overruled.
Mr. Roco: Exception.

A. Yes, sir.
Q. Who were the persons that sought to influence her?

118 Mr. Roco: We object to the question for the reason stated.
COURT: Objection overruled.
Mr. Roco: Exception.

A. My own children, who were angered because for some years I would not give them money. Formerly they bothered me and I gave it to them, but I got tired of being asked so often. One of my sons got money from me and spent it in vices and gambling so I became disgusted and stopped giving him any. So too, my son Rafael was always gambling, and he was even sentenced in this court to pay a fine.

Q. Your son Rafael was outsed from the Island of San Miguel in the year 1909, was he not?

A. Yes, sir.

Q. And you had a quarrel over that?

A. Yes, sir.

Q. And with Don Ramon Morales, your son-in-law?

A. Likewise.

Q. Married to a daughter of yours named Cándida?

A. Yes, sir.

Q. Did you refuse to give that gentleman or his wife a sum of money which they asked you for last year?

A. Yes, sir; it appears in the letter.

Q. You have said that you refused to give them money last year. Did you give them any before that?

A. Yes, sir.

Q. Up to what amount?

A. More than four hundred pesos.

119 Q. You formerly gave your son Pedro money and other things?

A. To my son Pedro? For what purpose?

Q. If you formerly advanced him money?

A. No, sir; but he was in charge of the cash as my representative; as he was my son I had confidence in him and he took charge of the books and the house.

Q. And you relieved Pedro from his position recently?

A. Yes, sir, on my return from Europe in 1908.

Q. Did you ask for an accounting from Pedro on your return?

A. Yes, sir.

Q. Did you ask for any amount——

COURT: The court considers that to be immaterial, and though counsel for the other side offers no objection, the court strikes out those questions as immaterial to the question at issue.

Q. As administrator of the conjugal property, have you contracted any obligations on that property?

Mr. SIERRA: We object to the question as immaterial.
COURT: Objection overruled.
Mr. SIERRA: Exception.

A. Yes, sir; because when the court appointed me in that case——

Q. Have you a memorandum of the obligations which you contracted?

A. Yes, sir.

Q. What are they?

A. I have incurred a debt with Dr. Salcedo of eleven thousand odd pesos.

120 Q. And you; have you any litigation pending against you?

A. Yes, sir.

Q. What is it?

A. That of the Isla de San Miguel.

Q. For what amount?

A. More than six hundred thousand pesos.

Q. Any other?

A. Yes, sir; the case of Manuel Cea for loss and damages, in which Messrs. Sierra & Roco were my attorneys.

Q. Where are these cases now?

A. Before the Supreme Court.

Q. Have you incurred any obligation to pay any amount by reason of these cases?

A. I have already paid Mr. Sierra his fees; but those for the Isla de San Miguel are not yet paid.

Q. And now how much do you owe on account of the Isla de San Miguel?

A. It was seven thousand five hundred pesos; I have paid four hundred and fifty, so there still remains seven thousand and fifty pesos.

Q. Besides that, do you owe anything to Mr. Pedro Villanueva?

A. Yes, sir; a deposit, for a note on deposit of three thousand nine hundred odd pesos.

Q. Do you owe anything besides this on account of the

121 liquidation of the partnership between you and Don Joaquin Tomas?

A. Yes, sir; five hundred odd pesos.

Q. Has the partnership not yet been fully liquidated?

A. No, sir; not yet, because the assets are still in possession of my partner and up to the present he has not been willing for me to see the books.

Q. Do you know if there is any other case in prospect?

A. Yes, sir; some minor ones on account of the sale of the mines.

Q. How much will they sue for?

A. According to what I hear, about five or six thousand pesos; but I have contested them because I don't believe I ought to pay.

Mr. SIERRA:

Q. You say that Don Joaquin Tomas knows, or is acquainted with, your illegitimate children because he lived in your house; how many years, more or less did Don Joaquin Tomas live in your house?

A. He stayed in my house at various times.

Q. About what dates?

A. He lived in my house in 1883, distilling ilang-ilang on his own account.

Q. And afterwards?

A. He stayed with me after we wound up the partnership of Villanueva & Co.

Q. How long, more or less, did he lived with you in your
122 house at that time?

A. Four or five years.

Q. He ate and slept in your house?

A. Yes, sir.

Q. And it was then that you took your children Melania, Julio, Felix and Toribia to your house, was it not?

A. They were already there, sir.

Q. Who was the mother of these children of yours?

Mr. MACMAHON: I object to the question because it is improper on cross examination, because it is incompetent, and furthermore because it is privileged. The witness desires to refuses to answer it.

Mr. SIERRA: We want the witness to say whether he wishes to answer it or no.

COURT: Having regard to the testimony which has been adduced before this court, there is no reason for excluding this question. The objection is overruled.

A. Florencia, with whom I had relations before I married my present wife.

Q. But is it not true that the said children were born after you had married Dona Teodora Arana?

Mr. MACMAHON: We object to the question because it is a privileged question and furthermore because it is incompetent and improper on cross examination.

COURT: Objection sustained; the question is an improper one on cross-examination.

Mr. SIERRA: Exception.

Q. How old is your daughter Melania, at the present time?

Mr. MACMAHON: We object for the same reason; it is improper on cross examination.

123 COURT: Objection sustained.

Mr. SIERRA: Exception.

Q. Where were your illegitimate children Melania and Felix born?

Mr. MACMAHON: I object to the question for the same reason. It is improper on cross examination; the witness has testified to nothing, on direct examination, with respect to the birth of these children.

COURT: Objection sustained.

Mr. SIERRA: Exception.

Q. Please tell us the names of the children of Quiteria Buenconsejo to whom you referred a while ago?

Mr. MACMAHON: I object to the question because this point was the object of the statement of the witness only to deny the statement of another witness of the plaintiff and not to prove any particular thing. Consequently the question is improper on cross examination.

COURT: Objection overruled. The witness has said that he has had children with this woman and that they lived with him in his house.

MACMAHON: Exception.

A. I have made no reference to the children of Quiteria. I only referred to the children that were in my house.

Q. So that it is not true that you said that you had children by Quiteria and that Don Joaquin Tomas knew of it?

A. I did not say that.

Mr. MACMAHON: We object to the question——

124 COURT: It is answered.

Q. You do not know Quiteria Buenconsejo?

Mr. MACMAHON: I object to the question.

COURT: Overruled.

A. I know her.

Q. And you do not know that Quiteria has children?

Mr. MACMAHON: I object to the question because nothing has been shown as to when she had children; therefore the question is privileged.

COURT: Objection overruled.

Mr. MACMAHON: Exception.

A. I know it.

Q. What are the names of the children of Quiteria Buenconsejo that you know?

A. I know Quiteria.

Q. The children?

A. The children, Maxima.

Q. What others?

A. Fortunato.

Q. Who else?

A. Balbino.

Q. Who else?

A. Emilia.

Q. Where do these children live now?

A. What children?

Q. The four whom you have named.

Mr. MACMAHON: I object to the question because the witness in explanation of his former answer, has said that he referred to the children who lived in his house, and not those of Quiteria

125 Buenconsejo who lived in his house. The question is incompetent.

COURT: Objection overruled.

Mr. MACMAHON: Exception.

A. They are not in my house; they are living with their relatives.

Q. Who are these relatives with w-om they live?

Mr. MACMAHON: We object to the question for the same reasons.

COURT: Objection overruled.

A. But I can not say that these are my children.

Q. I ask you, who is the relative with whom they live.

A. I do not know; I have only seen them with their mother and Salcedo.

Q. Salcedo is he who is married to your daughter Melania?

A. Yes, sir.

Q. And you mean to say that they live in Melania's house?

Mr. MACMAHON: We object to the question as incompetent, irrelevant, and improper on cross examination.

COURT: Objection overruled.

Q. You mean to say that they live in the house of Melania, the wife of Salcedo, do you not?

A. I do not know if they still live there; it appears they do.

Q. Is it not true that you frequented Salcedo's house and that you have seen them there?

Mr. MACMAHON: I object to the question because it has already been answered.

COURT: Objection sustained.

126 Mr. SIERRA: We withdraw the question.

Q. Don Joaquin Tomas was a partner of yours, was he not?

A. Yes, sir.

Q. And this partnership lasted several years, did it not?

A. Yes, sir.

Q. And while he was your partner, Don Joaquin Tomas lived in your house in Tabaco, did he not?

A. Yes, sir.

Q. By reason of your business association and living together in the same house, you were frequently together and conversed amicably, did you not?

Mr. MANLY: I object to the question because it is improper on cross examination and because it is immaterial. We are not here inquiring into any matters concerning the partnership of the defendant with Don Joaquin Tomas.

COURT: Objection overruled.

Mr. MANLY: Exception.

A. We had conversations on business matters.

Q. And you talked of nothing but business in the five years that you were associated

A. We had conversations, but it depends on what conversation.

Q. And you never discussed the matter of where the children who lived in the same house that you did came from?

Mr. MANLY: I object to the question as incompetent.

COURT: Objection overruled.

127 Mr. MANLY: Exception.

A. I do not remember to have talked of the children with him; we had various conversations and perhaps I have forgotten them; it was so long ago.

Q. So that you cannot be sure; you can not state with absolute certainty, whether or not you had any conversation with Don Joaquin Tomas with respect to these children?

Mr. MANLY: I object to the question as being indefinite.

COURT: Objection overruled.

Mr. MANLY: Exception.

A. No, sir.

Q. You said before that among your outstanding debts there was one owing Mrs. Pedro Villanueva, for a note for a certain sum; is this Pedro Villanueva a son of yours?

A. Yes, sir.

Q. Yet notwithstanding this you have testified here that you relieved your son of his position because he was not worthy of your confidence in his dealings as your cashier?

A. I did not say that I could not trust him. Formerly he had charge as he is my son, and I have entire confidence in him.

Q. So that there was no reason whatever for your relieving him as cashier?

A. No, sir. When I returned and asked for the balance of the cash, I only found one of a peso and ninety-three cents; I examined the books, and as they did not appear to me to be right, I
128 sent for him to explain; but he would not come to my house; he said that he had a large family to support and that he could not come to my house.

Q. So for that reason you relieved him as cashier?

A. No, sir; but on receiving his reply I wrote to him as a father and ordered him to come to the house for a moment to clear up the matter. He answered me in a letter that I still keep, because I preserve all letters——

Q. Good. You have said that you refused to give money to your legitimate sons because they used it in vices and gambling?

A. Yes, sir.

Q. And you can affirm this of all your legitimate sons?

A. No, sir; not all.

Q. And you defray the expenses of your illegitimate children, among them Julio Villanueva, do you not?

Mr. MACMAHON: I object to the question as being incompetent and improper on cross examination.

COURT: Objection sustained.

Mr. SIERRA: Exception.

Q. You have said that the last time that you had any carnal relations was with your wife, the plaintiff; will you tell us in what year it occurred?

A. About the time of the war, when we were concentrated at Ligao.

Q. Was it after or before the revolution?

A. Which revolution?

Q. The Philippine revolution; before or after the arrival
129 of the Americans?

A. Before.

Q. Much before?

A. I think it was a year.

Q. According to that, it was about the year 1899?

A. About that; I don't remember clearly our marital acts.

Q. After that; can you assure us that you have never again performed a carnal act with any woman, that you were unable to?

A. I could not.

Q. Is it not true that you were in Spain for certain——

(Evidently some testimony missing here. Translator.)

Q. Is it not true that while you were in Spain you used to frequent houses of ill fame?

A. No, sir.

Q. When you returned from Spain, did you see Florencia Quijano there in Tabaco?

A. Yes, sir; in 1901.

Q. Where did you see her?

A. I knew that she was with her son.

Q. Which son?

A. Julio.

Q. Did you never go to Julio's house?

A. Julio——

Mr. MACMAHON: I object to the question as being incompetent and improper on cross examination, and because the answer is privileged.

Q. After 1901.

130 Mr. MACMAHON: The same objections.

COURT: Objection sustained. The question should be more clear.

Q. In the year 1901, after your return from Spain, did you ever go to the house of Julio Villanueva, where Florencia Quijano lives?

A. No, sir.

Mr. MACMAHON: I object to the question for the same reasons.

COURT: It is answered.

Q. You know the house I refer to? The one in which Julio Villanueva and Florencia Quijano lived?

A. One can see the house.

Q. But do you know the house?

A. I should think so, seeing that it is in our town.

Q. But you have never entered this house of Florencia Quijano and Julio Villanueva?

A. No, sir.

Mr. MACMAHON: I object to the question.

COURT: Objection overruled.

Q. Have you ever spoken to Florencia Quijano since the year 1901 until now?

Mr. MACMAHON: I object to the question because it is improper on cross examination.

COURT: Objection overruled.

Mr. MACMAHON: Exception.

A. No, sir.

Q. And have you never seen Florencia Quijano since the year 1901 in the house of your daughter Melania?

131 Mr. MACMAHON: I object to the question as being improper on cross examination, incompetent and immaterial.

COURT: Objection sustained.

Mr. SIERRA: Exception.

Mr. MACMAHON: The defendant has no more evidence to submit.

Mr. ROCO: We have no evidence to present in rebut-al, but we ask the Court to leave the case open until we receive from Manila the deposition we are expecting.

COURT: The case will remain open solely for the purpose of obtaining the affidavit of Perfecto Murillo, witness for the plaintiff, which according to counsel must have been taken in Manila.

The further hearing of the case was postponed until the 27th of March, 1911.

I certify that the foregoing is a true and faithful transcription of the stenographic notes taken by me in the above-entitled case.

(Signed) BENITO RAZON,
Stenographer, 8th District.

132 UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance, Province of Albay, Eight- Judicial District.

Civil Case No. 1291.

TEODORA ARANA, Plaintiff,
vs.
MARIANO P. VILLANUEVA, Defendant.

For Divorce.

Before the Hon. P. M. Moir, District Judge.

ALBAY, March 27, 1911.

(Morning Session.)

Present:

Messrs. Sierra & Roco, counsel for the plaintiff, and
Messrs. Manly & MacMahon, counsel for the defendant.

The case was again called for rehearing.

Mr. Roco: We desire to announce to the court that one of our witnesses in this case, Perfecto Murillo, resident of Manila, swore to a deposition before the notary public Don Enrique Barrera y Caldez, in accordance with a notice we gave to the attorneys
133 for the defendant on the 25th of Febr-ary, 1911, and which is accompanied by the affidavit required by law. This deposition was made in the office of the said notary on the 3d of March, 1911, and no one was present at the time to represent counsel for the defendant. In order to present this deposition in evidence, we announce that we will proceed to read it.

(Attorney Roco reads the deposition.)

Mr. Roco: On line 26 of page 4 of the deposition: "Question: What sort of relations did they have with each other? (referring to the defendant Villanueva and Quiteria Buenconsejo). Answer: They seemed to me to be amorous ones."

Mr. Macmahon: We ask the court to strike out that answer in the deposition as being simply the opinion of the witness.

Court: The petition is denied.

Mr. Macmahon: Exception.

Mr. Roco: At the same page, line 28, following the foregoing, "Question. From these relations which you think were amorous, do you know if any children were born? Answer. People said so."

Mr. Macmahon: We ask the court to strike out this answer from the deposition as being hearsay.

Mr. Roco: We oppose the petition of counsel for the defendant because we have alleged in the complaint that the adultery of the defendant Villanueva was of notorious and public knowledge
134 in the community in which they lived; for that reason the question is competent.

Court: Objection overruled.

Mr. Macmahon: Exception.

Mr. Roco: On the first line of page 5 of the said deposition, "Question.—How do you know that children were born from those amorous relations and that they were Villanueva's?—Answer.—By that people said."

Mr. Macmahon: In addition to the objections made we ask the Court to strike out this answer from the deposition as being hearsay.

Court: Motion overruled.

Mr. Macmahon: Exception.

Mr. Roco: On line 15 of the same page 5, "Question. Before he went on board, did Mr. Villanueva give you any commission or any instructions to be complied with during his absence?

Mr. Macmahon: I object to the question as being immaterial.

Court: Objection overruled.

Mr. Roco: On the same page 5, the next question, line 18, "Question.—What commission did Mr. Villanueva give you?"

Mr. Macmahon: I object to the question as being immaterial.

Court: Objection overruled.

Mr. Macmahon: Exception.

On the 23d of August, 1910, the defendant demurred to
139 the complaint, and the demurrer was overruled by the court.
The order of the 27th of July, 1910, of this court, was modified in part by order of this same court, dated the 10th of October, 1910. The plaintiff then filed an amended complaint, the defendant demurred thereto and the demurrer was overruled by the court. The plaintiff having asked for alimony pendente lite, on the 29th of October, 1910, the court heard the proofs submitted and ordered the payment of one hundred pesos monthly to the plaintiff, for her support.

On the 8th of March, 1911, when the case was again called for hearing, the defendant filed an amended answer which the court accepted, considering it proper to allow proofs to be submitted of the facts alleged in the amended answer; but the court advised the plaintiff that she could have the defendant ask for a postponement of the hearing of the case at his own expense, which advice, after argument, was not accepted by the counsel for the plaintiff, who preferred to continue with the hearing.

A great deal of evidence has been submitted in the course of these proceedings and the principal points have been so clearly and conclusively proven that there can be no doubt as to the facts which were the object of the proofs.

From the evidence adduced the court is of the opinion and so holds that the following facts have been proven:

1. That the plaintiff and the defendant were married in Legaspi in the 11th of July, 1867, and since that time they have lived,
140 either here or in Tabaco, as man and wife, until the year 1909, in which year the plaintiff abandoned her husband's house, and that as a result of this marriage, the said plaintiff and defendant have had eleven children, nine of which are still living. The plaintiff at the present time is sixty-three years old and the defendant sixty-six; they are both so old and feeble that they had to be taking medicine during the course of the trial.

2. That the defendant herein was guilty of adultery with Florencia Quijano, as alleged in the complaint, during the period comprised between the years 1868 and 1900, in the latter of which he went to Spain. These acts of adultery had for a long time been known to the plaintiff; she herself testified in court that she had surprised the defendant in flagrante delicto on three different occasions. She gave her testimony and bore herself on the stand in such a manner that the court can not entertain the slightest doubt as to the veracity of her statements.

3. There was no proof whatever of the alleged acts of adultery of the defendant with Florencia Quijano from the year 1900 until the present time. Evidence was furnished to show that the defendant was seen on various occasions in company with the said Florencia Quijano and that on those occasions the defendant paid her certain attentions; but there is no direct testimony to prove the alleged adultery of the defendant during that time. The testimony of the doctor, Mr. José Salcedo, who, it may be said in passing, is married to an illegitimate daughter of the defendant called Melania, has shown

that the defendant, subsequent to the year 1900, was unable
141 to perform the carnal act by reason of his ill health—See also the testimony of Dr. Shannon Richmond on this point.

4. It has also been shown, and the court holds it to be proven, that the defendant committed adultery with Quiteria Buenconsejo for a number of years prior to his visit to Europe, before the year 1900; but it has also been shown that since the return of the defendant from Spain he has had nothing more to do with this Quiteria Buenconsejo. It is true that the plaintiff had no knowledge of this adultery and it is alleged that she could not have condoned it, which of course is certain; but she has testified in court that she has brought this action solely on account of the acts of adultery of the defendant with the woman Florencia Quijano, and on account of the trouble raised by that woman. In view of these statements and the fact that these acts occurred a long while ago, the court is of the opinion that such acts can not be considered to be sufficient reasons for now granting a divorce between the parties litigant. This also applies to the relations of the defendant with Vicenta Buenaflor.

5. The testimony has also shown, and the court holds it to have been proven, that the defendant committed acts of adultery with Vicenta Buenaflor; but this woman died at some time not shown by the evidence but which appears to have occurred at the beginning of the establishment of American régime in the province. With this woman the defendant had one daughter, named Maria,
who lives at the present time with his other daughter
142 Melania.

6. No other act of adultery committed by the defendant with any of the other women mentioned in the complaint has been proved.

7. The children that were born from the adulterous relations of the defendant with Florencia Quijano lived in the house of the plaintiff and the defendant; they were treated and publicly recognized by the defendant as his children, and by the plaintiff as members of her family. The other children, had through the adulterous relations of the defendant with other women, lived in the house of his illegitimate daughter named Melania, the wife of Dr. Salcedo.

All these facts have been so fully proven by the evidence, that the court does not think it necessary to make a more detailed relation of them.

8. The Supreme Court of the Philippine Islands, in the case of Benedicto vs. de la Rama, (3 Phil. Rep. 34), decided that there is a divorce law in the Philippines and that the only ground upon which a divorce may be granted is adultery. If these adulterous acts of the defendant herein, as proved in the trial, had been committed at a later time, or if the plaintiff had brought this action at the time they were committed, there is no doubt that the prayer of the plaintiff would have been granted and her divorce from the defendant decreed. The plaintiff has testified that she has not lived maritally with the defendant for the past ten years, but at the same time she said that she had lived temporarily in the house of the defendant,

in an accidental manner, on several occasions. The mere
143 fact that the plaintiff had no objection to living with the defendant as she did, for all the world knew as his wife, after the acts of adultery had been committed, is considered sufficient by the court to prove that the plaintiff pardoned the defendant for all the acts committed by him with Florencia Quijano prior to the year 1900. The fact that she did not occupy the same bed as the defendant is evidently established; but the defendant has testified that he has not cohabited with any woman whatsoever since that year on account of his infirmity, and that this is probably true is shown by the expert testimony of the doctors. The court is of the opinion that the pardon of the aggrieved party is a sufficient defense in divorce proceedings.

9. This court does not think that a divorce should be easily granted, but that there are cases in which it is just and proper no sane person will deny. The Spanish law authorizes it on the ground of adultery. The plaintiff states that she has not been advised or persuaded by her children to bring this suit and the court accepts her statement as true, but at the same time it believes that she was unconsciously influenced by some of those persons that were probably continuously jeering. A stronger mind than her own must have influenced her; if she was not unconsciously induced to bring this action, it appears strange to the court that the plaintiff has waited until her husband was almost at the edge of the grave
144 and she herself was waiting to be called to her final account, before she did so; that the plaintiff has suffered, as she must have done, during the flower of her age, without filing this suit, which she might reasonably have brought years ago, and that now she seeks to bring this action when she is mentally and physically bowed down by the weight of years. These facts appear so plain to the court, that he arrives unhesitatingly at the conclusion that some mind other that of the plaintiff, conceived the idea and has brought up the injuries suffered by her in the past, making them public without any consideration and that the plaintiff simply affixed her signature to the complaint. The court understands that the only persons that have any interest in the matter are the plaintiff's children, who consider themselves to be perjudiced in the hereditary portion which they expect to inherit from their father, the defendant herein, by his action in squandering it upon his illegitimate children. But all the evidence shows that these illegitimate children lived in the same house as did the plaintiff and her husband; that several of these children were taken by the defendant to Spain one time when he also took one of his legitimate daugthers, and that several of his illegitimate children were godparents at the baptism of some of the offspring of his legitimate children.

10. The Court can not help feeling the deepest sympathy for the plaintiff. She is now old and feeble, and things which in her prime passed by her unperceived now appear in the light of grave
145 injuries to her. This consideration might also apply with the same force to the defendant, but his conduct in the past

has been such that it deprives him of the respect and sympathy that his age deserves. But the court understands that it must decide the case in the light of the law, and the court believes that the law does not authorize a decree of divorce when, subsequent to the acts alleged to secure it, the ag-rieved party pardons the offender, whether in so many words or by subsequent actions. With reference to the other acts of adultery proved at the trial, so much time has elapsed since they were committed without the woman complaining of them because she neither knew of them then nor knows of them now, that although they have been included in the complaint, the court does not think that it should consider them as sufficient cause for decreeing a divorce between the parties litigant.

For the considerations and facts above set forth the court orders and decrees that the present case be dismissed, without special ruling as to costs.

So ordered.

Given in open session in Albay, Albay, on the ninth day of May, One Thousand Nine Hundred and Eleven.

(Signed) P. M. MOIR,
Judge, Eighth District.

On the same date the attorneys of the plaintiff were notified of this decision and they at once excepted thereto.

146 The same day the said attorneys filed the following:

Exception and Motion for a New Trial.

Now come the attorneys for the plaintiff in the above entitled civil suit and set forth to the court:

That they have been notified of the decision rendered in this case and not agreeing thereto they herewith give notice of their exception and intention to file a bill of exceptions so that the case may be taken to the Supreme Court in the usual way according to law.

At the same time we pray the court to set aside the judgment rendered in this case and order a new trial thereof for the reason that the judgment rendered is contrary to law and the facts, or some of them, as found by the court do not agree with the evidence adduced at the trial and are openly and manifestly contrary to the weight of the said evidence.

Albay, Albay, May 9, 1911.

SIERRA & ROCO,
(Signed) By RAFAEL DE LA SIERRA,
Attorneys for the Plaintiff,

which motion was denied in the following terms:

Order.

After a consideration of the motion of the attorneys for the plaintiff praying for a new hearing in this case, which motion is not well founded,

Resolved, that the motion be and hereby is overruled.
So ordered.
Albay, Albay, May 9, 1911.
(Signed) P. M. MOIR,
Judge, 8th District.

Counsel for plaintiff duly excepted to the foregoing order.

147 No. 1.

EXHIBIT "A."

Stamp.

I, Don Prudencio Santos, Parish priest of this town of Legaspi, Province of Albay, hereby certify: that at the back of folio 81 of the marriage register there is an entry that reads as follows:

On the margin: Mariano Villanueva and Isidora (torn) certificate. In Legaspi, of this Province of Albay, on the eleventh day of July in the year eighteen hundred and sixty-seven, after complying with all the requirements of the Holy Council of Trent and Royal Orders, I, Don Prudencio Santos, parish priest of this town, veiled at the nuptial mass, one Mariano Villanueva, (a bachelor, aged 26, son of Mariano Villanueva and the late Dionisia Mora, a native of Manila and registered in the town of Manito, barangay of Don Gabriel Dades), whom, while in articulo mortis, ad prolem legitimandum, I married by word of mouth, without the publishing of banns or other forms prescribed by the said council, whose requirements I declared to be epikejom and not then in force, to Isidora Arana, a Spinster, 19 years of age, daughter of Crisanta Arana, wife of Salvador Ciriaco, both of whom are natives of the capital of Albay and are registered in the barangay of Don Jose Albano. 1st. The witnesses were: Don Ildefonso Toralva, widower, and D. a Petrona Morales, both residents of this town. In testimony of which I have hereunto set my hand.

Stamp Parish of Legaspi.

Dios.

148

(Signed) PRUDENCIO SANTOS.

The above certificate has been faithfully copied from the original to which I refer. In witness whereof I have subscribed my name at this parish house of Legaspi on the sixth day of July, eighteen hundred and seventy (torn).
(Signed) PRUDENCIO SANTOS.

149 (On the back of the foregoing certificate:)

Paciano Imperial y Maravillas, Substitute notary of this Province of Albay.

I certify that the Presbiter Don Prudencio Santos, by whom the foregoing marriage entry was written, was called the parish priest of the town of Legaspi at the time he executed the said document, and

the signature and rubrica at the bottom thereof appear to be his and written, by his own hand, for they are identical with those which up to the present he customarily uses in all his writings. They should be accorded full faith, both within and outside of the jurisdiction.

On petition of the interested parties I have executed these presents which I stamp and sign in Albay, this second day of August, eighteen hundred and ninety.

(Signed) PACIANO IMPERIAL.

Stamp Notaria de Paciano Imperial.

150 EXHIBIT "B."

Affidavit.

I, Teodora Arana de Villanueva, after having been duly sworn according to law, do hereby declare:

That my true name is Teodora Arana, my age 62 years, that I am a native of the town of Daraga, Province of Albay, and a daughter of Crisanta Arana, now deceased. That on the 11th of June of 1867, I was canonically married in the parish church of Legaspi, Province of Albay, to Mr. Mariano P. Villanueva; that the certificate of the entry of the marriage is before me and appears as issued at the parish house of Legaspi on the 6th of July, 1873, by the parish priest Prudencio Santos, and duly certified to on the 2nd of August, 1890, by the notary of Albay, Mr. Paciano Imperial; that the clerk erroneously wrote the name of Isidora Arana therein in the place of my true name of Teodora Arana.

In witness whereof I sign this affidavit in the municipality of Albay this 23rd day of July, 1910.

her
TEODORA ARANA.
mark.

(Signed) R. MORALES.

Subscribed and sworn to before me this 23rd of July, 1910. The affiant did not produce a cedula for the reason that she is exempt on account of her sex. Affiant not being able to write she made her mark, and Don Ramon Morales wrote her name at her request.

(Signed) EUGENIO DE LEOZ,
Notary Public until Dec. 31, 1910.

[NOTARIAL SEAL.]

Stamp.

151 EXHIBIT "C."

N. O. 511,700.

Stamp.

Don Prudencio Santos, parish priest of this town of Legaspi, Province of Albay.

Certify: that at page 240 of baptismal register No. 2 of the records of this parish under my charge, there is an entry that reads as follows:

Entry. In Legaspi, of this province of Albay on the 15th of October of 1870. I, Don Prudencio Santos, parish priest of this Church of St. Rafael, solemnly baptized and administered the Holy oil to a male child of nine days of age, to which I gave the name of Rafael Ramón Villanueva, a legitimate child and born in legitimate wedlock of Mariano Villanueva and Teodora Arana, Chinese mestizos of this pueblo, belonging to the barangay of Don Vicente Villanueva, No. 14, grandson on the paternal side of Mariano Villanueva and Dionisia Mora and on the maternal side of Crisanta Arana. The godfather was Don Mariano Reyes, bachelor, M. E., a native of the province of Manila, whom I advised as to the spiritual parentage and obligations which he had contracted. In witness whereof I sign my name— PRUDENCIO SANTOS.

The which entry is a true and literal copy of the original in question. Parish house of Legaspi, May 7, 1884.

(Signed) PRUDENCIO SANTOS.

Stamp, Parish of Legaspi.

152 EXHIBIT "C," PLAINTIFF.

Duplicate.

TABACO, September 12, 1903.

My dear daughters Isidora, Melania and Toribia:

I received your welcome letter of the 2d. instant and read its contents with interest. I am pleased that you are enjoying good health in company of your aunts. I am about the same, somewhat better of my cold but on the other hand one of my eyes is a little irritated but I do not think it is anything serious.

Pandoy is now municipal president of this town; he was appointed by the provincial government. But as the people are reconcentrated there is not much work in our office as there is no delivery of hemp and but few sales made in anything. True, the capture of the bands of thieves who roam around the mountains of this province give the president a great deal to do.

I am glad that Juanito and Teodoro now have their teacher; I want them to apply themselves to their studies so as to lose no time.

You may tell friend Salcedo that with respect to his wishes I have no objection, and today I am writing to Messrs. J. and C. Muñoz to let him have the sum of $1,500 that he wants; he can get it whenever he wants it.

All this month the Judge of Albay will be here and next month I shall return because then I shall have finished my business.

With regards from all to everybody, you know that your father loves and sends you his blessings.

(Signed) MARIANO.

153 P. S.—Do not make any more drawers as I am having them made here. Make a mosquito net for the carriage so as not to injure the paint.

154 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Albay, Eighth Judicial District.

Civil No. 1291.

TEODORA ARANA DE VILLANUEVA, Plaintiff,
versus
MARIANO P. VILLANUEVA, Defendant.

Divorce.

Enrique Barrera y Caldes, notary public of this city of Manila, and a resident of the same,

Hereby certify, that on this date, March 3, 1911, there appeared before me in my office situated at No. 4 Calle Das-Mariñas, formerly Olivares, in the district of Binondo in this city of Manila, Don Perfecto Murillo, a merchant, of age, a widower, resident of this city of Manila, Philippine Islands, who exhibited his personal cedula No. 1553, issued in Manila on the sixth of January of the present year, assisted by his attorney Dan Mariano Melendres in representation of Messrs. Singson, Ledesma & Lim, and these latter representing Messrs. Sierra & Roco, for the purpose of taking the deposition of the said Mr. Perfecto Murillo in accordance with the notice given by Messrs. Sierra & Roco to Messrs. Manly & MacMahon, counsel for Don Mariano P. Villanueva, defendant in the above-entitled case; that although in the said notice the 2d. day of the present month was set for the taking of the said deposition, this could not be
155 effected for the reason that the undersigned notary was engaged in affairs pertaining to his office; it is also set forth that the representatives of the attorneys for the defendant were not present on the date mentioned nor are they to-day. By virtue of the said notification, the taking of the deposition was proceeded with in the following manner at ten o'clock this morning.

DON PERFECTO MURILLO, after having been duly sworn and interrogated by Don Mariano Melendres, testified:

Q. What is your name?
A. Perfecto Murillo.
Q. Where do you live?
A. In Manila, 24 Calle Orozco, Quiapo.
Q. What is your profession?
A. Merchant.
Q. Do you know Don Mariano Villanueva?
A. Yes, sir.
Q. What is the degree of relationship between Don Mariano Villanueva and Mrs. Arana?
A. That of matrimony; they are man and wife.
Q. When you knew them did they live under the same roof?
A. Yes, sir.
Q. Were their conjugal relations good?
A. Yes, sir.
Q. How many years have you known Mr. and Mrs. Villanueva?
A. Twenty years, more or less.
Q. Where did you know them?
A. In the town of Tabaco.
156 Q. Where do they live now and where formerly?
A. In the same town of Tabaco.
Q. Do you know if they have any children?
A. Yes, sir.
Q. How many of them are there and what are their names?
A. Nine: Pedro, Francisca, Maria, Rafael, Delfin, Candida, Isidora, Mariano and Vicente.
Q. What relations have you, or have you had, with these spouses?
A. At first as an employee and later as a friend.
Q. Have you resided in Manila?
A. No, sir; it will be seven years on this date (sic).
Q. How many years have you lived in Manila?
A. The length of time I have just mentioned; that is to say seven years.
Q. Where did you live prior to those seven years?
A. In Tabaco and in Catanduanes.
Q. Are you an intimate friend of Mr. Villanueva?
A. I think so.
Q. How many years has this friendship lasted?
A. Not quite eleven years.
Q. Are you a friend of Señora Arana?
A. I also think so.
Q. Since when have you been a friend of this lady?
A. Since 1889 to 1890.
Q. Has Mr. Villanueva ever told you things in confidence?
A. Yes, sir.
Q. As between ordinary friends or such things as one would
157 only tell to intimate friends?
A. As both.

Q. Did Mr. Villanueva ever trust you with an important secret of his life?
A. Yes, sir.
Q. Has Mr. Villanueva ever made a trip abroad?
A. Yes, sir.
Q. In what year did he make that trip?
A. About the year 1900.
Q. Where did he start from?
A. The town of Tabaco.
Q. Was he alone or was he accompanied by other persons?
A. Accompanied by others.
Q. How many companions did he have?
A. I think there were four.
Q. Were the persons accompanying him members of his family?
A. Yes, sir.
Q. Who were they, what were their names, and what was their relationship to Mr. Villanueva?
A. Melania, Toribia, Isidora and a servant; the last named is a daughter by his wife and the other two are known as his daughters by another woman.
Q. All those who left with Mr. Villanueva returned together to the Archipiélago?
A. Yes, sir.
Q. Did you know Quiteria Buenconsejo before Mr. Villanueva left?
158 A. Yes, sir.
Q. How, when and where did you know this lady?
A. I knew her in Tabaco when I was there in about 1889 or 1890.
Q. Did Mr. Villanueva know Quiteria Buenconsejo before he left?
A. Yes, sir.
Q. Did they have any relations with each other?
A. Yes, sir.
Q. What sort of relations did they have with each other?
A. They seemed to me to be amorous ones.
Q. From these relations which you think were amorous, do you know if any children were born?
A People said so.
Q. How many children?
A. Three or four.
Q. How do you know that children were born from these amorous relations and that they were Villanueva's?
A. By what people said.
Q. Who paid for the maintenance and education of these children?
A. I do not know.
Q. Do you know the names of these children?
A. I do not remember.
Q. Are they still living or are they dead?
A. I do not know.
Q. Do you not know with whom these children are living?

A. When I went to the town of Tabaco they were living
159 with their mother.

Q. Does Mr. Villanueva make any allowance for their support?

A. I do not know.

Q. Before he went on board did Mr. Villanueva give you any commission or instruction to be complied with during his absence?

A. Yes, sir.

Q. What commission did Mr. Villanueva give you?

A. He left a certain sum of money with me to be paid periodically to Quiteria Buenconsejo.

Q. Did you comply with it?

A. Yes, sir.

Q. Do Mr. Villanueva and Quiteria Buenconsejo still maintain the same intimate relations as before Mr. Villanueva left?

A. I don't suppose they do.

Q. Why don't you suppose so?

A. Because when he returned from Spain and found out that she had been unfaithful to me (sic) he had nothing more to do with her.

Q. In what year did these relations terminate?

A. About the year 1901.

Q. How long did their relations continue?

A. They say that these relations lasted from the year 1889 or '90 until the year I left Tabaco, that is to say in 1904.

160 Q. How do you know that they terminated?

A. By what Mr. Villanueva himself said and because latterly his acts sh-wed it.

Q. Do you know Florencia Quijano?

A. Yes, sir.

Q. How, when and where did you know her?

A. In the town of Tabaco in about the year 1901, or thereabouts.

Q. Was she married or single when you knew her?

A. Single.

Q. This Quijano knows Mr. Villanueva?

A. Yes, sir.

Q. What tie binds them?

A. It is said that they were in love with each other.

Q. Do they still maintain these relations?

A. I do not know.

Q. Do you know if these relations were interrupted and for what cause?

A. I do not know.

Q. Do you know if any children were born of these relations?

A. Yes, sir; because people said so.

Q. How many, and what are their names?

A. Four: Toribia, Melania, Felix and Julio.

Q. How do you know that children were born and that they were Mr. Villanueva's, the defendant's?

A. Because they publicly known as such and were so considered; and by the way Mr. Villanueva treated them.

161 Q. What surname do these children bear?

A. I do not know, although they are considered to be children of Villanueva. I must say that on one occasion I saw Julio sign his name as Quijano.

Q. Have you seen them sign Villanueva?

A. Never.

Q. Did they bear the name of Villanueva in public?

A. I do not know, although they are publicly and notoriously known as sons of Villanueva.

Q. With whom do they live at the present time?

A. From what I hear, some of them live with Mr. Villanueva.

Q. Does Mr. Villanueva make them any allowance for their maintenance or for any other purpose?

A. I do not know.

Q. Do you know Doña Vicenta Buenaflor?

A. No, sir.

Q. Do you know Asunción Caña?

A. No, sir.

Q. Do you know Eugenia Guerrero?

A. No, sir.

Q. Do you know a person named Maria, of the barrio of San Lorenzo, town of Tabaco?

A. No, sir.

Q. Do Mr. Villanueva and Señora Arana at the present time live under the same roof?

A. I hear that they live separately.

Q. Are you aware of the causes underlying their separa-
162 tion?

A. I am not.

Q. Where does Mr. Villanueva live now?

A. In Tabaco.

Q. Does he live with a concubine?

A. I do not know.

Q. Has Mr. Villanueva any fortune?

A. It appears that he has.

Q. What kind of property has he?

A. Real estate and credits.

Q. What rental do they produce?

A. I do not know.

Manila, March 3, 1911.

(Signed) PERFECTO MURILLO.

ENRIQUE BARRERA Y CALDES, notary public of this city of Manila, a resident of the same and duly commissioned for the purpose, by these presents:

Certify, that Don Perfecto Murillo, who made the foregoing declaration, did so before me after having been duly sworn; that the said declaration was taken in the place and on the day mentioned, that is to say, in my office at No. 4 Calle Dasmarinas, formerly Olivares, district of Binondo, in this city of Manila on this date and at ten o'clock in the morning; that Don Perfecto Murillo is a resident of

this city of Manila and not of the Province of Albay where civil case No. 1291, entitled Teodora Arana de Villanueva, plain-
163 tiff, versus Mariano P. Villanueva, defendant, is being tried; that the foregoing declaration will be used by the plaintiff as evidence in the said case No. 1291; that the said declaration was reduced to writing at the time it was made, carefully read by said Don Perfecto Murillo and subscribed by him in my presence; that the said declaration was taken for the reason ser forth in the notification made by Messrs. Sierra & Roco, attorneys for the plaintiff; and that no one appeared in representation of Messrs. Manly & MacMahon, attorneys for the defendant.

In witness whereof I affix my signature and the seal of my office to this certificate in Manila this 3d day of March, 1911.

(Signed) DON ENRIQUE BARRERA Y CALDES,
[SEAL.] *Notary Public.*

Commission expires Dec. 31, 1912.
Stamp.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Albay, Eighth Judicial District.

Civil No. 1291.

Divorce.

TEODORA ARANA DE VILLANUEVA, Plaintiff,
vs.
MARIANO P. VILLANUEVA, Defendant.

164 LEGASPI, ALBAY, February 25, 1911.

Messrs. Manly & MacMahon, Attorneys for the Defendant.

GENTLEMEN: By these presents you are hereby notified that on Thursday, March 2, 1911, at nine o'clock antemeridian, we shall take the depositions of witness Perfecto Murillo, a resident of the city of Manila, Philippine Islands. The said depositions will be taken on the day and hour mentioned before the notary public D. Enrique Barrera y Caldes, at his office on Calle Anloague, at the corner of Olivares, district of Binondo, City of Manila.

The depositions so taken will be utilized by the plaintiff as evidence at the hearing of the said case.

We enclose an affidavit to show that the present case is one that falls within the provisions of article 355 of the Code of Civil Procedure.

Very respectfully,
(Signed) SIERRA & ROCO,
Attorneys for the Plaintiff, Legaspi and Nueva Caceres.

Received a copy this 25th of February, 1911, together with the affidavit mentioned.
(Signed) MANLY & MACMAHON.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Albay, Eighth Judicial District.

165 Civil No. 1291.

Divorce.

TEODORA ARANA DE VILLANUEVA, Plaintiff,
vs.
MARIANO P. VILLANUEVA, Defendant.

Affidavit.

Angel Roco, after having been duly sworn, deposes and says:
That he is one of the members of the firm of Sierra & Roco, attorneys for the plaintiff in the above-entitled case; that a certain Perfecto Murillo is a necessary witness therein; that his testimony is necessary at the hearing of the said case as proof of the plaintiff; that the said Perfecto Murillo resides in the city of Manila, Philippine Islands.

(Signed) ANGEL ROCO.

Signed and sworn to before me in Albay, Albay, Philippine Islands this 25th day of February, 1911. The affiant exhibited his cedula numbered F. 62920, issued in Albay, Albay, on the 25th day of February, 1911.

(Signed) PABLO FIRAZA,
Clerk of Court of First Instance and ex-Officio Notary Public, Albay Province, P. I.

Seal and Stamp.

166 MANILA, March 5, 1911.

SIR: I have the honor to forward herewith the deposition taken before me as notary public by Don Perfecto Murillo in accordance with the notification made by Messrs. Sierra & Roco in civil case No. 1291 in the Court of First Instance of Albay, Teodora Arana de Villanueva as plaintiff vs. Don Mariano Villanueva as defendant.

Very truly yours,
(Signed) ENRIQUE BERRERA Y CALDES.

To the Clerk of the Court of First Instance of Albay, Eighth Judicial District.

167 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 7314.

TEODORA ARANA DE VILLANUEVA, Plaintiff and Appellant,
versus
MARIANO P. VILLANUEVA, Defendant and Appellee.

Decision.

ARELLANO, *C. J.:*

Teodora Arana, 63 years of age, brings suit for divorce against her husband, Mariano P. Villanueva, 70 years of age, to obtain a legal separation and division of the common property of the conjugal partnership, one-half of which she petitions be delivered to her. Plaintiff's action is founded on many and successive adulterous acts alleged to have been committed by her husband: (1) Since the year 1868, shortly after their marriage, for they were married in July, 1867, up to the date of the complaint, with a woman by whom he had 5 children, four of whom are at present alive and bear their father's surname, Villanueva; (2) along about the years 1889 and 1890, with another woman by whom he had only 1 child, a daughter, who also uses her father's surname, Villanueva;
168 (3) about the year 1891, with another woman by whom he had a son, who died at the age of seven years; (4) since the year 1892, with another woman by whom he had 4 children who likewise are known by their father's surname, Villanueva; and (5) about the years 1901 and 1902, with one woman, and about 1903 and 1904, with still another, with whom it is not stated whether he had any offspring. During their long married life, this couple begot 11 children, 9 of whom are living, all but one being — legal age.

The Court of First Instance of Albay, which tried this cause, made the following findings of fact: (1) That the children had by the defendant by the first woman with whom he committed adultery lived in the house of the herein litigant couple and were treated and publicly recognized by the defendant as his children, and by the plaintiff as members of their family; (2) that the other children the defendant had by the other two women referred to in Nos. 2 and 4 hereinabove lived in the house of one of his illegitimate daughters, the wife of a physician; (3) that several of these illegitimate children of the defendant were taken with him on his trip to Spain, together with a legitimate daughter of his (and also another legitimate child); and finally (4), that at the christening of the children of some of the legitimate offspring of the defendant, several of his illegitimate children acted as sponsors.

The plaintiff testified at the trial, on March 6, 1911, that she had

finally ceased to live in the conjugal home "more than a
169 year ago", and that she did so because of the displeasure she felt when her husband had resumed relations with the first woman with whom he had committed adultery, whose children had been received in the conjugal home under the defendant's promise that he would have nothing further to do with their mother; that, besides the children had by this woman, she had only heard rumors that her husband had other children, recognized by him as his own, by the second and the fourth woman; that she knew nothing about one Maria who claimed to be a daughter of the second woman mentioned in No. 2 of the statement of facts; that she had not yet heard about this second woman; and that the children of the first woman were taken to the conjugal home on different occasions and on different dates, without her uttering a word, the first being Teodoro, after whom came the rest, in successive years.

Q. Can you explain to us how you were able to tolerate you- husband's acts with this woman Florencia (the first one specified in your complaint) for a period of about forty years, and why it is that only very recently you have been unable to tolerate the defendant's acts?

A. I did not live in the house continuously on that account and used to leave the house from time to time.

Q. Is it not true that the children of that woman named Florencia have been in your house ever since they were small?

A. They came to my house to live, under my husband's promise that he would never again return to Florencia.

170 Q. Are all those children of Florencia now of age?

A. Yes, sir.

Q. So the reasons why you left your house and filed your complaint are those you have just mentioned in reference to your husband's relations with the woman Florencia, and also because you were not the mistress of your home, are they not?

A. Yes, sir.

Q. Are those the only reasons why you left your home and filed this suit?

A. Yes, sir.

Q. You have known nothing else and have had no other complaints against your husband?

A. Only that, and furthermore I do not wish to live with my husband any longer, and desire that our property be divided between the two.

Q. You have said that for some thirteen years you have not had conjugal relations with your husband or slept in the same bed with him—is it not true that, owing to the defendant's sickness and old age, you have not been able longer to maintain sexual relations?

A. Although we were not suffering from any decease, we did not sleep together in the same bed.

Q. Is it not true that during all this time the defendant has been under the care of a physician and has made two trips to Europe to recover his health?

A. Yes, sir.

Q. But in 1900, did not you (the plaintiff and the defendant) go together from Tabaco to Manila, when the Americans were
171 here?

A. Yes, sir; I remember that.

Q. Have not you said that lately you slept in the same room with your daughter Isidora, who is unmarried?

A. Yes, sir.

Q. Are not aged Filipino woman and mothers in the habit of sleeping in the same room with their unmarried daughters?

A. Yes, sir.

The court dismissed the case, without special findings as to the costs. From this judgment the plaintiff appealed.

An examination of the appeal, together with the allegations of both the parties therein, discloses:

(1) That, although the wife accused the husband of adultery with six women successively from the year 1868 to the year 1904, during the trial she repeatedly affirmed that the charge of adultery with the first woman was the only one which she adduced and maintained as a cause of action, and expressly stated that she had no other complaint aside from that against the first woman, by whom her husband had four children.

(2) That these four children had been living in the conjugal home, as likewise the daughter of another woman, with the consent of the legitimate wife and bore and had been bearing, the same as the children of another woman, the surname of their illegitimate father, for a long period of time; and it was proved by documentary evidence presented by the plaintiff herself and the testimony of numerous witnesses for the defendant (which the court below
172 did not find it necessary to pass upon, in view of his opinion with respect to the main issue) that those children were treated by both spouses, even publicly, the same as the legitimate children.

(3) That the wife continued to reside in the conjugal domicile until a little more than one year prior to the filing of her complaint, when she had already reached the age of 63 years, and the husband, about 70, for his marriage certificate, on July 26, 1867, recorded his age as 26 years, which with the forty-three elapsed from 1867 to 1910 made 69 years; and that, although it be admitted that subsequent to 1900 the husband committed some other act of infidelity, it is true that during the seven or eight succeeding years there was no suspension of the conjugal life, or any break in the harmony or at least conciliation existing between both spouses, who, as the court observed and stated in his judgment, appeared "to be so aged and weak that they both had to keep taking medicines during the hearing of the case" (B. of E., pp. 51, 52).

The law applicable to this case is the Partidas, as was very rigorously demonstrated in the decision rendered by this Supreme Court in the case of Benedicto vs. De la Rama (3 Phil. Rep., 34), wherein it is stated:

The law now in force in the Philippine Islands as to grounds for

divorce is to be found in the Partidas, and the only cause authorizing divorce is adultery.

Either the husband or the wife may sue the other for divorce. (Laws 1 and 2, title 9, and Law 2, title 10, Partida 4.)

173 Only the spouses can exercise this action. (Law 2, title 9.)

Condonation by the offended spouses operates to defeat the action. (Law 6, title 9.)

Law 7, title 17, Partida 7, concedes to the spouse accused of adultery the absolute defense against the offended spouse's action that the adultery was committed with the latter's consent. Article 434 of the Penal Code in force authorizes an aboslute exception in prescribing:

The husband can never enter complaint against the guilty parties if he has condoned the adultery or pardoned either of them.

An absolute exception is likewise allowed the husband in the action brought against him by his wife, as prescribed by article 437, according to which the provisions of article 434 are applicable to the case referred to in the said article 437. The prescription of the action for adultery, which, pursuant to the same Law 7, takes place after a lapse of five years, is also an absolute defense.

And this as though it should be said that the adultery of which he is accused were committed five years before he was accused.

Finally, the defense specified in Law 8, of the same title 17, Partida 7, is an absolute one, to wit, the fact that the spouses continued to live together in the same house, or, what is more, to occupy the same bed, or the fact that the offended spouse continued to receive the offending spouse in mensa or in thoro, for any of these acts

174 signifies, says the law, that one did not resent the other's fault. Relying on these legal provisions, the trial court rightly ordered dismissal of the complaint.

The trial court only took account of the right of action maintained by the plaintiff on trial, based on the principle that is only the offended spous- who may bring an action for divorce. (Laws 1 and 2, title 9, Partida 4.) The plaintiff testified before the court in the sense of restricting the facts alleged in her complaint to the one fact which she submitted on trial, or endeavored to prove, to wit, that she initiated this action only on account of the defendant's acts of adultery with the first woman specified in the complaint, Florencia Quijano. Consequently, the allegations relative to her husband's adultery with five other women, should be stricken out of her complaint.

Under sanction of Law 7, title 17, of Partida 7, and the juridical principle which shapes the provisions contained in article 434 of the existing Penal Code, the lower court dismissed the complaint because the plaintiff condoned all the acts of adultery committed by the defendant from 1868 to 1910, a consent which evidently implies condonation of the offense, as shown by the pertinent fact that the plaintiff consented that the children of the first woman and the daughter of the second, all mentioned in her complaint, should live in the conjugal home and be treated by her as members of the family.

The court, under guidance of the principle set out in the same

Law 7 afor-cited, correctely held that if these acts of adultery
175 committed by the defendant, as was proved at trial, had been committed by him at a more recent time, or if the plaintiff had brought this action at the time of their commission, there would be no doubt that the divorce sought by her should be granted; but that, the action having been brought subsequent to the acts performed and condoned for more than forty years, the complaint would be met by the condonation which such acts implied, and there is no statute which authorizes a divorce sought under such conditions.

Upon the principle in Law 8 of the same title and Partida, the lower court rightly decided:

The mere fact that the plaintiff had no objection whatever to living, as she did, with the defendant, as his wife, in so far as it could be publicly known that she did, is a proof which the court considers sufficient to establish that the plaintiff condoned all the acts the defenda-t committed with Florencia Quijano prior to the year 1900.

American procedents are cited to show that the presumption that the offense has been condoned when the parties live together after the performance or the discovery of an act which may be a cause for divorce is not so strong against the wife as against the husband, because, in her dependent position, she is not at all times free to leave the home and find support elsewhere. A Spanish decision might likewise have been cited, pursuant to which the fact that the spouses were seen together in a public walk or at a social gathering subsequent to the commission of adultery by either of them is not conclusive proof that a condonation or reconciliation was ef-
176 fected between them. But the plaintiff was in the enjoyment of her liberty and as she testified used to make long visits to her daughter Francisca's home, and, according to the testimony of one witness, managed some business such as marketing in which both spouses were engaged, whereby to support herself, and, of course, with her children's approval, in order thus to manifest her repugnance and energetic protest against those acts of her husband offensive to her dignity and the sanctify of the home.

It is a legal principle that the condonation of the offense by the offended spouse does not authorize the offender to repeat the offense, for, if such were the case, there would be a renewal of the action for a new adultery; but such a legal principle can not be here applied, inasmuch as the repetitions were continuous and all of them appear from the very language of the complaint to have been condoned. If the first child of the first corespondent was admitted into the conjugal home under the promise that the husband would not repeat the offense, it also was proved that in succeeding years, as stated by the offended party, the rest of the children at different times entered the conjugal home, which proves that the husband repeated the offense in the succeeding years and begot other children who were admitted under the same always unfulfilled promise, and if upon the entry of the last child by the first corespondent the last condonation was granted under the said promise, it is also a fact that

another child, a daughter, by another corespondent likewise
177 was taken into the conjugal home, and all this while the couple continued to live under the same roof, without a threat nor even an intention to bring an action for adultery, until the year 1900 when they came to this city and here lived together without the least complaint such as might evidence any disagreement or rupture of the marital relations. It was averred that even after 1910 the defendant continued his relations with the first woman, which are the sole basis and the sole cause of the complaint; but, with respect to this point, the court expressed his opinion upon the preponderance of the evidence as considered by him in the following language:

There is no proof whatever of the alleged acts of adultery by the defendant with Florencia Quijano from the year 1900 to the present date. Evidence was presented that the said defendant was seen on several occasions with the said Florencia Quijano and that on those occasions the defendant showed her certain attentions and courtesies; but there is no direct testimony whatever to prove the alleged adultery of the defendant during this time. The testimony of the physician, José Salcedo (who, by the way, is married to an illegitimate daughter of the defendant), has proved that the latter was, subsequent to 1900, unable to perform the act of coition, by reason of his illness. See also the testimony of Dr. Shanon Richmond on this point (B. of E., p. 52).

The cohabitation quoad mensam, although not quoad thorum, which subsisted for forty years and until a little more than a year prior to the bringing of this suit between these two aged people, and the absence of any application for legal relief
178 during so long a period of time, evidence a constant agreement which precludes, without direct proof, any foundation for the belief that this defendant, in his old age and with a constitution weakened by an incurable disease, still is given to dissipations that violate the conjugal fidelity. The lower court holds that such dwelling together uninterruptedly, implying as it does an absolute condonation of all offenses past, precludes in every way a judgment of divorce.

Being in accordance with law, the judgment appealed from is hereby affirmed, with the costs of this instance.

Torres, Mapa, Johnson, and Trent, JJ., concur.
Judgment affirmed.

179 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7314.

TEODORA ARANA DE VILLANUEVA, Plaintiff and Appellant,
versus
MARIANO P. VILLANUEVA, Defendant and Appellee.

Motion for Rehearing.

Now comes the plaintiff and appellant in the above entitled action and respectfully prays the Court to grant a rehearing therein, on the following grounds:

I.

The court erred in holding that appellant had condoned all acts of adultery of appellee with Florencia Quijano, and that said acts are not ground for divorce.

II.

The court erred in holding that the adultery committed by the appellee with Quiteria Buenconsejo is not sufficient ground for divorce.

III.

The court erred in holding that the adultery committed by the appellee with Vicenta Buenaflor is not sufficient ground for divorce.

IV.

The court erred in weighing the motives which induced
180 appellant to bring the action for divorce.

V.

The court erred in finding that the adulterous acts complained of by appellant were too remote.

VI.

The court erred in finding that all the acts of adultery proved against appellee are not sufficient to entitle appellant to a divorce.

VII.

The court erred in holding that the findings of fact made by the trial court supported the judgment rendered by the trial court herein.

Manila, P. I., March 6th, 1913.

(Signed) O'BRIEN & DE WITT,
Attorneys for Plaintiff and Appellant.

181 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 7314.

TEODORA ARANA DE VILLANUEVA, Plaintiff,
versus
MARIANO P. VILLANUEVA, Defendant.

Comes now the plaintiff in the above entitled action, and excepts to the judgment of the Supreme Court of the Philippine Islands confirming the decision of the Trial Court and its refusal to re-consider said decision, and gives notice that the plaintiff will appeal therefrom to the Supreme Court of the United States, and will prepare the necessary pleadings and perfect the same as required by law.

(Signed) O'BRIEN & DE WITT,
Attorneys for the Plaintiff.

Manila, P. I., March 14th, 1913.

182 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7314.

TEODORA ARANA DE VILLANUEVA, Plaintiff & Appellant,
versus
MARIANO P. VILLANUEVA, Defendant & Appellee.

Petition for an Appeal to the Supreme Court of the United States.

To the Honorable Chief Justice of the Supreme Court of the Philippine Islands or any Associate Justice of said Court:

The petition of Teodora Arana de Villanueva respectfully shows that on the — day of ——, 1913, the Supreme Court of the Philippine Islands rendered a final decree against your petitioner in a certain cause, wherein your petitioner was the plaintiff and the said Mariano P. Villanueva was the defendant, wherein your petitioner prayed for a decree of divorce between your petitioner and the said defendant, for a partition of the conjugal property belonging to the conjugal partnership, of the adjudication of the part thereof belonging to your petitioner, for the appointment of a receiver in order that the property in question be administered under the direction of the Court during the pendency of the judgment; for an
183 injunction prohibiting the defendant from disposing of his property during the pendency of the litigation, and for general relief as set forth in your petitioner's complaint.

That the decision of the said Supreme Court of the Philippine Islands will appear by reference to the record and proceedings in

said cause, and that the said Supreme Court is the highest court of the said Philippine Islands in which a decision in said cause can be had.

And your petitioner, conceiving herself aggrieved by the said decision of the said Supreme Court of the Philippine Islands made and entered on the — day of ——, 1913 in the above entitled cause as heretofore alleged, does hereby appeal from said decision to the Supreme Court of the United States under Section 10 of the Acts of Congress of July 1, 1902, entitled the "Philippine Bill", because the value of the property in controversy in this cause exceeds the sum of $25,000 currency of the United States, as appears from the affidavit of Teodora Arana de Villanueva filed herewith and made a part hereof, and because of the reasons specified in the assignment of errors filed herewith, and your said petitioner prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decision was made, duly authenticated, may be sent to the Supreme Court of the United States. Your petitioner furthermore prays that she may be allowed to perfect her appeal in the above-entitled cause without
184 paying costs or fees to the clerk or other officers of this court because of the affidavit of your said petitioner, Teodora Arana de Villanueva, made and filed in this cause according to law and attached hereto and made a part hereof.

Dated this 19th day of May, 1913, at Manila, Philippine Islands.

(Signed) C. W. O'BRIEN,
" C. A. DE WITT,
Attorneys for Petitioner.

The foregoing claim of appeal is allowed.

185 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7314.

TEODORA ARANA DE VILLANUEVA, Plaintiff & Appellant,
versus
MARIANO P. VILLANUEVA, Defendant & Appellee.

Assignments of Error.

Now comes the plaintiff and appellant in the above-entitled cause and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the Philippine Islands in the above entitled matter, there is manifest error in this, to wit:

1. The Supreme Court of the Philippine Islands erred in holding that the appellant had condoned all acts of adultery of the defendant and appellee with Florencia Quijano.

2. The Supreme Court of the Philippine Islands erred in holding that the said acts of adultery of the defendant and appellee with Florencia Quijano were not grounds for the granting of a divorce.

3. The Supreme Court of the Philippine Islands erred in holding that the adultery committed by the defendant and appellee with Quiteria Buenconsejo were not sufficient grounds for a divorce.

186 4. The Supreme Court of the Philippine Islands erred in holding that the adultery of the defendant and appellee with Vicenta Buenaflor is not sufficient ground for a divorce.

5. The Supreme Court erred in weighing the motives which induced the plaintiff to bring this action.

6. The Supreme Court of the Philippine Islands erred in holding that the adulterous acts complained of by the plaintiff in the above entitled cause were too remote.

7. The Supreme Court of the Philippine Islands erred in holding that all the acts of adultery proved against the defendant and appellee were not sufficient to entitle the plaintiff and appellant to a divorce.

8. The Supreme Court of the Philippine Islands erred in holding that the findings of fact supported the judgment rendered by the trial court herein.

9. The Supreme Court of the Philippine Islands erred in denying the appellant's motion for a re-hearing.

Wherefore, the said plaintiff and appellant prays that said decision, judgment and decree be reversed, and judgment be rendered in her favor with costs.

Manila, P. I., May 17, 1913.

(Signed) C. W. O'BRIEN,
" C. A. DE WITT,
Attorneys for the Petitioner and Appellant.

187 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 7314.

TEODORA ARANA DE VILLANUEVA, Plaintiff and Appellant,
versus
MARIANO P. VILLANUEVA, Defendant and Appellee.

The Clerk of the Supreme Court of the Philippine Islands:

On petition of counsel for plaintiff and appellant, it is ordered that an appeal to the Supreme Court of the United States of America from the final decree and judgment heretofore filed and entered herein be, and the same hereby is, allowed: and that a certified transcript of the record, testimony stipulation, and all proceedings herein be forthwith transmitted to said Supreme Court of the United States of America.

It is further ordered that a bond on appeal be fixed at the sum of $500 U. S. currency.

Manila, P. I., October 29th, 1913.

(Signed) C. S. ARELLANO,
Chief Justice of the Supreme Court of the Philippine Islands.

193 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G., No. 7314.

TEODORA ARANA DE VILLANUEVA, Plaintiff and Appellant,
versus
MARIANO P. VILLANUEVA, Defendant and Appellee.

UNITED STATES OF AMERICA,
City of Manila, Philippine Islands, ss:

Comes now Teodora Arana de Villanueva, plaintiff and appellant in the above-entitled cause, and after being duly sworn upon oath deposes and says:

That she has no money or property whereby she is able to pay clerk's fees and costs of certifying a transcript of the record in the above-entitled cause, and that she is absolutely dependent upon the defendant and appellee in the above entitled cause for her support, and that said defendandt and ap-ellee absolutely refuses to furnish her money whereby to pay the said clerk's fees and costs of certifying a transcript of the record in the above-entitled action.

her
TEODORA ARANA DE VILLANUEVA.
mark.
(Sgd.) GREGORIO (illegible),
Testigo de Cruz.

Subscribed and sworn to before me this 29 day of May, 1913, at Tabaco, in the Province of Albay, P. I., affiant exhibiting no cedula, being exempt therefrom by reason of sex.

(Sgd.) MARIANO BARATETA,
[SEAL.] *Notary Public.*

My commission expires December 31st, 1914.

Stamp.
R/78.
P/23.

194 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7314.

TEODORA ARANA DE VILLANUEVA, Plaintiff & Appellant,
versus
MARIANO P. VILLANUEVA, Defendant & Appellee.

UNITED STATES OF AMERICA,
City of Manila, Philippine Islands, ss:

Comes now Teodora Arana de Villanueva, plaintiff and appellant in the above-entitled cause, of lawful age, and after having been duly sworn upon oath says:

That she is the plaintiff in the above entitled cause, and that the value of the property in controversy in said cause exclusive of all costs, exceeds the sum of $25,000.00, United States currency.

her
TEODORA ARANA DE VILLANUEVA.
mark.
(Sgd.) GREGORIO (illegible),
Testigo de Cruz.

Subscribed and sworn to before me this — day of ——, 1913, in the municipality of Tabaco, in the Province of Albay, P. I., the affiant exhibiting no cedula, being exempt therefrom by reason of her sex.

(Signed) MARIANO BARATETA,
[SEAL.] *Notary Public.*

My commission expires December 31st, 1914.

Stamp.
R/79.
P/23.

195 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7314.

TEODORA ARANA DE VILLANUEVA, Plaintiff & Appellant,
versus
MARIANO P. VILLANUEVA, Defendant & Appellee.

Precipe.

To the Clerk of the Supreme Court of the Philippine Islands:

You will please include in the record in the above entitled action, on behalf of the plaintiff and appellant, the following parts thereof:

1. An English translation of the amended complaint filed in the above entitled cause on the 7th of October, 1910, appearing on Pages 27 to 36 of the Bill of Exceptions.

2. The English tra-slation of the summonses issued in the above-entitled cause on the 3rd of August, 1910.

3. The English tra-slation of the amended answer filed
196 on the 8th of March, 1911, appearing on pages 45 and 46 of the Bill of Exceptions.

4. An English translation of all the evidence, both oral and documentary presented at the trial in the above-entitled cause.

5. An English translation of the decision rendered by the Honorable P. M. Moir on the 9th of May, 1911, appearing on pages 47 to 57 inclusive of the Bill of Exceptions.

6. An English translation of the exception and motion for new trial made by the plaintiff in the above entitled cause on the 9th

day of May, 1911, appearing on pages 57 and 58 inclusive of the Bill of Exceptions.

7. An English translation of the order of the Honorable P. M. Moir of the 9th day of May, 1911, over-ruling the said motion for a new trial, page 58 of the Bill of Exceptions.

8. An English translation of the plaintiff's exception to said order, page 58 of the Bill of Exceptions.

9. An English translation of Exhibits "A," "B" and "C," all forming exhibits which were united to the original complaint, and all made a part of the amended complaint by reference.

10. An English translation of Exhibit "C" duplicate, as stated on page 59 of the Bill of Exceptions.

11. An English translation of the deposition of Perfecto Murillo, taken on the 3rd of March, 1911, before the notary public Enrique Barrera.

12. An English translation of the decision of the Supreme
197 Court of the Philippine Islands in the above-entitled cause.

13. An English translation of the motion for a re-hearing filed in the above entitled cause by the plaintiff and appellant on the 6th day of March, 1913.

14. An English translation of the exception to the decision of the Supreme Court of the Philippine Islands confirming the decision of the Trial Court, and its refusal to re-consider said decision, and notice of the appeal filed on the 14th day of March, 1913.

15. The English translation of the application for an allowance of an appeal to the Supreme Court of the United States.

16. The English translation of the allowance thereof.

17. The English translation of the assignments of error accompanying said application.

18. The Citation.

19. The appeal bond.

20. The verified application for permission to appeal in forma *pua*peris.

21. The affidavit of the property involved.

22. This precipe.

Manila, P. I., May 19, 1913.

(Signed) C. W. O'BRIEN,
" C. A. DE WITT.
Attorneys for Plaintiff and Appellant.

198 To the Attorneys for Defendant and Appellee:

You are hereby notified that the foregoing consists of the portions of the record which the plaintiff and appellant in the above-entitled cause desires to be incorporated in the transcript thereof, for the purpose of prosecuting her appeal before the Supreme Court of the United States.

(Signed) C. W. O'BRIEN,
" C. A. DE WITT.

Received copy of the foregoing precipe this 31 day of May, 1913.

(Signed) ROBERT E. MANLY,
Attorney for Defendant and Appellee,
Nueva Cáceres, P. I.

199 In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in said Supreme Court, wherein Teodora Arana de Villanueva was appellant, and Mariano P. Villanueva was appellee, R. G. No. 7314, a final decree was rendered by said Supreme Court on the 17th day of March, A. D. 1913, in favor of said appellee, and against the said appellant and on the 19th of May, 1913, the said appellant prayed for an appeal to the Supreme Court of the United States, which was allowed.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Supreme Court, at Manila, Philippine Islands, this 12th day of December, A. D. 1913.

[Seal Corte Suprema Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

200 UNITED STATES OF AMERICA:

The Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing one hundred ninety-eight (198) pages of typewritten matter contain a true and correct translation and transcript of the record and proceedings had in the Court of First Instance of Albay and in the Supreme Court of the Philippine Islands in the case of Teodora Arana de Villanueva, Plaintiff and Appellant, versus Mariano P. Villanueva, Defendant and Appellee.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court this 12th day of December, A. D. 1913.

[Seal Corte Suprema Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

201 THE UNITED STATES OF AMERICA:
ESTADOS UNIDOS DE AMÉRICA:

Supreme Court of the Philippine Islands.
Corte Suprema de las Islas Filipinas.

March 17th, 1913.

File No. 7314.
Registro No.

TEODORA ARENA DE VILLANUEVA, Plaintiff and Appellant,
Demandante y Apela,

versus
contra

MARIANO P. VILLANUEVA, Defendant and Appellee.
Demandad y Apela.

Judgment.
Sentencia.

The Court having regularly acquired jurisdiction for the trial of
Adquirida por este Tribunal la debida competencia para el conocimiento
the above-entitled cause submitted by both parties for decision, after
del asunto arriba titulado, el cual ha sido sometido por ambas partes para su resolución, y después
consideration thereof by the Court upon the record, its decision and
de considerado por el Tribunal con vista de los autos, su decisión y
order for judgment having been filed on the 14th day of February,
orden para la sentencia, habiendo sido registrados el dia de
A. D. nineteen hundred and thirteen.
mil novecientos

By virtue thereof it is hereby adjudged and decreed that the
En virtud de dicha orden se decreta por la presente queda
judgment of the Court of First Instance of Albay, dated the
sentencia del Juzgado de Primera Instancia de fecha
9th day of May, nineteen hundred and eleven, and from which the
de mil novecientos y contra la cual se interpuso
above-entitled appeal was taken, be and the same is hereby affirmed,
dicha apelación sea
with costs of this instance.

It is further ordered that the appellee recover from the appellant
Se orden, además, que recobre de
the sum of P40.00, as costs.
la cantidad de en concepto de costas.

[Seal Corte Suprema Islas Filipinas.]

(Signed) V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.
Escribano de la Corte Suprema de las Islas Filipinas.

A true copy.

C. R. ANGELL,
Deputy Clerk.

202 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 7314.

TEODORA ARANA DE VILLAMUEVA, Plaintiff and Appellant,
versus
MARIANO P. VILLANUEVA, Defendant and Appellee.

The Clerk of the Supreme Court of the Philippine Islands:

On petition of counsel for plaintiff and appellant, it is ordered that an appeal to the Supreme Court of the United States of America from the final decree and judgment heretofore filed and entered herein be, and the same hereby is, allowed; and that a certified transcript of the record, testimony, stipulation, and all proceedings herein be forthwith transmitted to said Supreme Court of the United States of America.

It is further ordered that a bond on appeal be fixed at the sum of $500.00 U. S. currency.

Manila, P. I., October 29th, 1913.

C. S. ARELLANO,
Chief Justice of the Supreme Court of the Philippine Islands.

203 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7314.

TEODORA ARANA DE VILLANUEVA, Plaintiff and Appellant,
versus
MARIANO P. VILLANUEVA, Defendant and Appellee.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Mariano P. Villanueva, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the city of Washington, D. C., within one hundred and twenty (120) days from the date of this writ, pursuant to an appeal, duly allowed by the Supreme Court of the Philippine Islands, and filed in the Clerk's Office, in a cause wherein Teodora Arana de Villanueva is plaintiff and appellant and you are defendant and appellee, to show cause, if any, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

204 Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States of America, this 29th day of October, 1913.

C. S. ARELLANO,
Chief Justice of the Supreme Court
of the Philippine Islands.

Service of the copy of the within citation is hereby admitted on this 29th day of October, 1913.

HAUSSERMANN, COHN & FISHER,
p. p. CHARLES C. COHN.

(Here follow fac-similes of registry receipts.)

Endorsed on cover: File No. 24,044. Philippine Islands Supreme Court. Term No. 352. Teodora Arana de Villanueva, appellant, vs. Mariano P. Villanueva. Filed February 4th, 1914. File No. 24,044.

7314

curt

REGISTRY RETURN RECEIPT.

ACUSE DE RECIBO DE CERTIFICADO.

Form No. 1548a
Modelo No. 1548a

Received from the Postmaster at office and on date shown by postmark.
Recibido del postmaster de la oficina y en la fecha indicada por el timbre.

Registered / Letter / Carta / Parcel / Paquete — No. 97262 — Certificate No.

From Post-Office at MANILA, P. I.,
De la Estafeta de MANILA, I. P.,

Addressed to / Dirigido á Sierra & Roco

(Name of addressee.)
(Nombre del destinatario.)

Sierra & Roco

(Signature or name of addressee.)
(Firma ó nombre del destinatario.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear on this receipt.
Cuando se haga entrega á un representante del destinatario, deben escribirse en este recibo las firmas del destinatario y de su representante.

Rafael Ruiz Jun

(Signature of addressee's agent.)
(Firma del representante del destinatario.)

A registered article must not be delivered to anyone but the addressee, except upon addressee's written order.
Un certificado no debe entregarse más que al destinatario, á menos que dé orden por escrito para que se entregue á otra persona.
When the above receipt has been properly signed, it must be postmarked with name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.
Cuando dicho recibo haya sido debidamente firmado, debe estar timbrado con el nombre de la oficina de entrega y la verdadera fecha de entrega y debe enviarse á su dirección sin sobre ni sello de correos.

2—45

must be neatly and correctly made up and addressed at the ore the article is registered.
ne esta tarjeta con corrección y claridad y dirigirse á la oficina para donde artículo.

aster who delivers the registered article must see that this ly signed, postmarked, and mailed to the sender.
e que entregue el artículo certificado debe hacer que se firme y timbre debidamente, y sea remitido al remitente.

POSTMARK OF DELIVERY OFFICE
Timbre de la Oficina de Entrega

LEGASPI P.I.
NOV 3
3 PM
1913
ALBAY

DATE OF DELIVERY.
Fecha de Entrega.

Bureau of Posts.

PHILIPPINE ISLANDS.

OFFICIAL BUSINESS.

PENALTY OF $300 FOR PRIVATE USE.
Multa de multa por uso particulares.

Supreme Court

Street and Number,
Calle y Número,

Post-Office Box.
Apartado de Correos.

MANILA,

PHILIPPINE ISLANDS.
ISLAS FILIPINAS.

6

[redacted] mail go to every post-office [redacted] and provide for safe transit [redacted] delivery.
[redacted] istry fee is 25 centavos, Philippine currency, in addition to the regular [redacted] both of which must be prepaid by [redacted] of postage stamps affixed to the [redacted] registered.
[redacted] especiales certificados vaya á todas las [redacted] y facilitar la seguridad en tránsito [redacted] entrega.
[redacted] certificado es de 25 centavos, moneda [redacted] además del franqueo ordinario, [redacted] todos los cuales deben pagarse por [redacted] de sellos de franqueo adheridos al [redacted] registrado.

REGISTRY RECEIPT.

Letter / Parcel — No. 97262 Post-office Manila P. I.

RECEIVED for registration [redacted] 191 [redacted] from the [redacted]

Supreme Court

addressed to Sierra & Roco

Legaspi

S/M. COTTERMAN P.O.

P. M.

Postage prepaid, [redacted] de franqueo pagado.

Office Supreme Court, U. S.
FILED
OCT 26 1915
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. [redacted]65

TEODORA ARAN DE VILLANUEVA, APPELLANT,

vs.

MARIANO P. VILLANUEVA.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE APPELLANT.

C. W. O'BRIEN,
Manila, P. I., Attorney for the Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 352.

TEODORA ARAN DE VILLANUEVA, APPELLANT,

vs.

MARIANO P. VILLANUEVA.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE APPELLANT.

Statement of Facts.

This is an action for a divorce, or more properly a separation, by a woman against her husband under the Spanish law in force in the Philippine Islands. The wife charges her spouse with having committed adultery with six different women, by whom he had eleven illegitimate children, as alleged in paragraphs 3, 4, 5, 6, 7, and 8 of the complaint (Rec., 2, 3). The trial court, in its decision, found on pages 72, 73, and 74 of the record, has made a complete

statement of the case, to which reference is made, without reproducing it herein. The trial court held that the principal points have been so clearly and conclusively proven that there can be no doubt as to the facts which were the object of the proofs.

They were married in 1867 and lived together until 1902, when the wife left her husband and lived apart, except for occasional visits made to her home to see her children. About ten years previous to 1902 five of the illegitimate children had by one of the women were brought into the conjugal home and treated as members of the family. Before receiving these children into their home the defendant promised his wife that he would have nothing more to do with their mother (Rec., 11), but later broke this condition (Rec., 11, 12, 18). The children by the other women were kept at the home of his illegitimate daughter, who had married a doctor.

The defendant pleaded a general denial and, for the purpose of this appeal, two special defenses: first, that if the alleged acts were committed they were performed with the authority, knowledge, and consent of the plaintiff and have been condoned by her; second, that the action has prescribed (Rec., 6).

The trial court found that between the years 1868 and 1900 the defendant had committed adultery with Florencia Quijano, Quiteria Buenconsejo, and Vicenta Buenaflor, and had illegitimate children by each of them, but held that the acts of adultery charged with the other women were not proven.

The trial court refused to grant the plaintiff any relief and dismissed the case, for the reason that she lived with the defendant after the acts of adultery had been committed, and considered this fact sufficient to prove to the court that she had pardoned her husband only for all acts committed by him with Florencia Quijano prior to the year 1900; that she did not occupy the same bed as her husband, but that the defendant testified that he has not cohabited with any

woman since 1900, on account of his infirmity, and the court concludes that the pardon of the aggrieved party is a sufficient defense in divorce proceedings (Rec., 76), even though he broke the condition.

The court then proceeds to justify its holding on the ground that the plaintiff must have been unduly influenced to bring the action after so many years (Rec., 76, paragraph 9 of the decision).

In regard to the other acts of adultery proved at the trial the court held that so much time had elapsed since they were committed without the woman complaining of them, because she neither knew of them then nor knows of them now, and although they have been included in the complaint, that they are not sufficient cause for decreeing a divorce between the parties litigant.

The Supreme Court of the Phillipine Islands affirmed the lower court and materially changed the findings of fact found in paragraph 8 of the trial court's decision (Rec., 75 and 76), which found that the woman had not lived maritally with her husband for the past ten years, but, at the same time, she said she had lived temporarily in the house of the defendant in an accidental manner on several occasions. The Supreme Court held that during the seven or eight years succeeding 1900 there was no suspension of the conjugal life or any break in the harmony and that conciliation existed between the spouses.

The Supreme Court of the Philippine Islands further held (Rec., 91) that because the plaintiff only knew personally and had initiated this action on account of the defendant's acts of adultery with the first woman specified in the complaint, that, consequently, the allegations relative to her husband's adultery with five other women should have been stricken out of her complaint.

Assignment of Errors.

1. The Supreme Court of the Philippine Islands erred in holding that the appellant had condoned all acts of adultery of the defendant and appellee with Florencia Quijano.

2. The Supreme Court of the Philippine Islands erred in holding that the said acts of adultery of the defendant and appellee with Florencia Quijano were not ground for the granting of a divorce.

3. The Supreme Court of the Philippine Islands erred in holding that the adultery committed by the defendant and appellee with Quiteria Buenconsejo was not sufficient ground for divorce.

4. The Supreme Court of the Philippine Islands erred in holding that the adultery of the defendant and appellee with Vicenta Buenaflor was not sufficient ground for a divorce.

5. The Supreme Court of the Philippine Islands erred in weighing the motives which induced the plaintiff in bringing this action.

6. The Supreme Court of the Philippine Islands erred in holding that the adulterous acts complained of by the plaintiff in the above-entitled cause were too remote.

7. The Supreme Court of the Philippine Islands erred in finding that all the acts of adultery proved against the defendant and appellee were not sufficient to entitle the plaintiff and appellant to a divorce.

8. The Supreme Court of the Philippine Islands erred in holding that the findings of fact supported the judgment rendered by the trial court herein; and

9. The Supreme Court of the Philippine Islands erred in denying the appellant's motion for a rehearng.

ARGUMENT.

I. AND II.

The Supreme Court of the Philippine Islands erred in holding that the appellant had condoned all acts of adultery of the defendant and appellee with Florencia Quijano.

The Supreme Court of the Philippine Islands erred in holding that the said acts of adultery of the defendant and appellee with Florencia Quijano were not ground for the granting of a divorce.

As we have seen in our statement of facts, the defendant and appellee, between the years 1868 and 1900, lived in continuous adultery with one Florencia Quijano, as a result of which relationship certain children were born. Of this relationship the plaintiff and appellant had knowledge. The defendant and appellee also lived in adultery for a number of years prior to the year 1900 with one Quiteria Buenconsejo. Of this relationship plaintiff and appellant had no knowledge. The defendant and appellee also committed adultery with one Vicenta Buenaflor some years prior to the presenting of this action, as a result of which a daughter was born. Of this relationship plaintiff and appellant had no knowledge.

The only evidence of condonation to be found is that the plaintiff and appellant lived casually in the house of the defendant and appellee for a little time after her separation with him in the year 1900. It is our contention that the evidence is not sufficient to establish condonation such that the plaintiff is deprived of her action, for the following reasons:

1. The doctrine of condonation is not applied so strictly to the wife as to the husband.

2. Condonation does not embrace all the acts of the offending party, but only the acts of which the condoning party had knowledge at the time thereof.

The authorities all hold that condonation is not so easily inferred and is not so strict a bar against the wife as against the husband. The reason for this is apparent. The wife is usually utterly dependent upon the husband and greatly under his control. It is not easy for her to sever the domestic ties that bind her to the husband's household, thereby giving up her home and means of support. She may continue to live with her unfaithful husband, knowing his unfaithfulness and not thereby condoning the same by sheer force of necessity. As Lord Stowell, in the case of D'Aguilar *vs.* D'Aguilar, 1 Hag. Ec., 773, 786, said:

> "A woman has not the same control over her husband, has not the same guard over his honor, has not the same means to enforce the matrimonial vow; his guilt is not of the same consequence to her; therefore the rule of condonation is held more laxly against the wife."

In Beeby *vs.* Beeby, 1 Hag. Ec., 789:

> "She may find a difficulty either in quitting his house or withdrawing from his bed. The husband, on the other hand, cannot be compelled to the bed of his wife; a woman may submit to necessity."
>
> See Bishop on Marriage, Divorce, and Separation, sec. 284, and cases cited.

On the second point the authorities are uniform. In the very nature of things one cannot forgive an unknown injury. The result is that a matrimonial offense of which the offended party had no knowledge continues to subsist as to such offense with all the rights flowing therefrom vested in the offended party, notwithstanding the fact that another offense of which the offended party has knowledge has been condoned. Condonation is a voluntary act and cannot be held to embrace more acts than the condoning party intended.

The forgiveness of one act does not bar divorce for another.

Ralston *vs.* Ralston, 8 Scotch. Sess. Cas., 4th ser., 371.

It is also held that a general condonation of cohabitation extends simply to what the condoning party knew.

Alexandre *vs.* Alexandre, Law Rep., 2 P. M., 164.

Indeed, it is intimated that an implied condonation by one knowing only a part does not so much as cover the part. It is perfectly apparent that one might condone a single act "committed under mitigating circumstances, yet not more, much less a series of offenses." See Bishop on Marriage, Divorce, and Separation, sec. 299, and cases cited, as follows:

Note 5, D'Aguilar *vs.* D'Auguilar, 1 Hag. Ec., 773; 3 Eng. Ec., 329, 337; Durant *vs.* Durant, 1 Hag. Ec., 733; 3 Eng. Ec., 310; Turton *vs.* Turton, 3 Hag. Ec., 338; 5 Eng. Ec., 130, 136; Bramwell *vs.* Bramwell, 3 Hag. Ec., 618; 5 Eng. Ec., 232, 238; Odom *vs.* Odom, 36 Ga., 286; Clouser *vs.* Clapper, 59 Ind., 548; Verholf *vs.* Van Houwenlengen, 21 Iowa, 429.

The same principle is expressed in the Spanish law in the preamble to the law of civil marriage of the 18th of June, 1870, under the heading "Divorce—Causes and Effect." Under this heading it is stated:

> "Article 87 of the project (85 of the law), in which are defined the causes giving rise to divorce, is based upon this same principle. The generating principle of all is the same that inspired the ecclesiastical jurisprudence, which is most jealous of the perpetual and continuous union of the spouses. The woman's adultery, or the same crime committed by the husband, if at the same time he abandons his wife or humiliates her to the point of taking his mistress in the conjugal house, makes possible the divorce, *unless these grave offenses shall have been tacitly or expressly forgiven by the innocent spouse.*"

This law, with the exception of articles 44 to 78 thereof, was never extended to the Philippine Islands.

The law governing divorce for adultery and the condonation of such offenses is to be found in the "Partidas."

Benedicto *vs.* De la Rama, 3 Phil. Rep., 34; 201 U. S., 303.

By law 6, title 9, partida IV, the husband's pardon is made a part of a suit for divorce on the ground of his wife's adultery.

In view of the foregoing we submit that there was insufficient evidence before the court to justify its finding that the acts of the defendant and appellee committed with Florencia Quijano had been condoned, or that any such condonation as there might have been was sufficient to purge the defendant and appellee of all guilt flowing from his unknown acts of adultery.

The court found that from the year 1900 to the present time the appellee was seen on various occasions with his mistress, Florencia Quijano, and that on these occasions he treated her with marked attention, though there was no proof of adultery at that time. We submit, however, that if the offending husband, while enjoying a conditional forgiveness for adultery with a woman, continues to flaunt that woman before the eyes of his wife in public places, the condonation or conditional forgiveness is withdrawn and the injured wife still has her action at law, even though no further act of adultery is proved.

All condonation, especially the implied condonation, is upon the condition that continually thereafter the party forgiven shall treat the other with conjugal kindness; "whereupon a breach of the condition revives the original right of divorce." Bishop on Marriage, Divorce, and Separation, sec. 308, and cases cited. See also secs. 311, 312, and 313 of the same author, and cases cited. We submit, therefore, that the Supreme Court of the Philippine Islands erred in holding that an effective condonation of the adultery of

the defendant and appellee with Florencia Quijano existed at the time of the trial such as to constitute a bar to her action for divorce.

III.

The Supreme Court of the Philippine Islands erred in holding that the adultery committed by the defendant and appellee with Quiteria Buenconsejo was not sufficient ground for divorce.

The trial court found that the defendant and appellee's adultery with Quiteria Buenconsejo was unknown to the plaintiff and appellant. That adultery is ground for divorce within the Philippine Islands requires no argument. We have here, then, a case of uncondoned adultery on the part of the defendant and appellee. The trial court held that the plaintiff and appellant had condoned the defendant and appellee's adultery with Florencia Quijano, and that this condonation extended to the adultery of Quiteria Buenconsejo, of which she had no knowledge. That this position is untenable is demonstrated by the authorities we have already cited under the foregoing assignment of error. There can be no condonation of an unknown act. Therefore we submit that the court erred in holding that the adultery committed by the appellee with Quiteria Buenconsejo was not sufficient ground for divorce.

IV.

The Supreme Court of the Philippine Islands erred in holding that the adultery of the defendant and appellee with Vicenta Buenaflor was not sufficient ground for a divorce.

The reasoning of the trial court with regard to the acts of adultery committed by the appellee with Vicenta Buenaflor are subject to the same criticism as that indicated under

the foregoing assignment of error. We will not duplicate argument thereon.

V.

The Supreme Court of the Philippine Islands erred in weighing the motives which induced the plaintiff in bringing this action.

We submit that the court has no right to inquire into the motives for the bringing of an action if the right of action exists under the law. The right of action cannot be made to depend upon the motives of the person by whom it is exercised. We therefore submit that the trial court erred in ruling that the motives of the plaintiff and appellant in bringing this action were sufficient to defeat the bringing of the action.

VI.

The Supreme Court of the Philippine Islands erred in holding that the adulterous acts complained of by the plaintiff in the above-entitled cause were too remote.

We do not understand the ruling of the trial court in holding that the defendant's acts of adultery were too remote in point of time. There is no law of prescription for separation (art. 1961 *et al.*, Civil Code). The plaintiff had a right to exercise her action and to receive a decree in the absence of a showing of full condonation with subsequent conjugal kindness on the part of the defendant. We therefore submit that the trial court erred in finding that the adulterous acts complained of were too remote.

VII.

The Supreme Court of the Philippine Islands erred in finding that all the acts of adultery proved against the defendant and appellee were not sufficient to entitle the plaintiff and appellant to a divorce.

An examination of the record will disclose that the defendant and appellee lived in continuous adultery during almost his entire married life, and that his acts of adultery were not confined to a single woman, but were committed with three different women, as a result of which he has three families of children.

The children by the first woman were received into the family on the express condition that the defendant would repent, cease to devote his attention to the mother of them, and, of course, treat his wife with conjugal kindness. He broke each of these express conditions (Rec., 11). In 1900 the husband went to Spain and the wife went to live with her daughter at Virac, on the Island of Catanduanes, lying off the shore from the province where they resided. Upon his return to the town of Tabaco the wife came from Virac and found that he had resumed his relations with Florencia Quijano. The husband made frequent trips to the town of Legaspi, going every Saturday (Rec., 12). He treated his wife as a servant. She could no longer remain in the home. Her children had grown up and married, and were living apart; so she made long visits first to one, then another, until in 1910 she returned home on the celebration of the birthday of her daughter, the youngest child by her husband, and remained over night (Rec., 18). This demonstrates that she did not forgive her husband; neither did she renew her conjugal life with him.

Greenleaf on Evidence, vol. II, sec. 53, states that:

> "Condonation is forgiveness with an implied condition that the injury will not be repeated and that

> the party shall be treated with conjugal kindness; and on breach of this condition the right to remedy for former injury revives."

This principle is frequently quoted with approval by our State courts (Fisher *vs.* Fisher, 93 Md., 298). Acts of adultery are revived by failure to treat the party with conjugal kindness and by acts of impropriety tending toward but falling short of the repetition of the offense (Davis *vs.* Davis, 19 Ill., 334; Moorhouse *vs.* Moorhouse, 90 Ill. App., 401; Fisher *vs.* Fisher, 93 Md., 298; 48 Atl., 833; Timerson *vs.* Timerson, 2 How. Pr. N. S., 526; Johnson *vs.* Johnson, 14 Wend., 637 (*reversing* 4 Paige, 460 (*reversing* 1 Edw., 439)) *quære;* Langdon *vs.* Langdon, 25 Vt.,678; 60 Am. Dec., 296; Durant *vs.* Durant, 1 Hagg. Eccl., 733; 3 Eng. Eccl., 310; Cooke *vs.* Cooke, 9 Jur. N. S., 754; 32 L. J. P. & M., 154; 8 L. T. Rep. N. S., 644; 3 Swab. & Tr., 126; 11 Wkly. Rep., 957; Dent *vs.* Dent, 34 L. J. P. & M., 118; 13 L. T. Rep. N. S., 252; 4 Swab. & Tr., 105; Winscom *vs.* Winscom, 10 Jur. N. S., 321; 33 L. J. P. & M., 45; 3 Swab. & Tr., 380; 10 L. T. Rep. N. S., 100; 12 Wkly. Rep., 535; Ridgway v. Ridgway, 29 Wkly. Rep., 612. *Contra* Collins *vs.* Collins, 9 App. Cas., 205; 32 Wkly. Rep., 500).

The defendant treated his wife as a servant when she was in his home. He continued his attentions to Florencia Quijano, and was often seen going into her home at night and leaving there early in the morning (Rec., 31, 32, and 33). Hence, it is presumed that he went there to renew his adulterous relations with this woman. The opportunity and the occasion accompanied, as he himself admits, with the desire, were present, and at least the court must conclude that these were improprieties tending towards a repetition of the offense which would revive his former acts of adultery.

It was certainly disrespectful to, and a mistreatment of, his wife. Both the trial court and the Supreme Court of the Philippine Islands failed to properly consider this phase of the question. The evidence of the defendant in this case

is similar to some of the evidence in the case of De la Rama *vs.* De la Rama, which, upon considering, this court made some very pertinent remarks in regard to its credibility. It is hard to conceive for what purpose the defendant would go to the house of a woman and remain over night with her unless it would be for a repetition of his adulterous acts, and we believe that for this alone his evidence and the evidence of his son-in-law, who testified as a physician, should be disregarded. But even admitting that what he stated were true, the plaintiff contends that he has revived all his former acts and offenses by his future acts of impropriety.

This case was tried in March, 1911. The plaintiff testified (Rec., 21) that she ceased to have marital relations with her husband approximately thirteen years previous to that time. From the fact that she occasionally returned to her home to visit her children who still resided therein, it shall not be presumed that the parties were living together as man and wife or that they resumed marital relations (Harnett *vs.* Harnett, 59 Iowa, 401; 13 N. W., 408; Toulson *vs.* Toulson, 93 Md., 754; 50 Atl., 401; Hann *vs.* Hann, 58 N. J. Eq., 211; 42 Atl., 564. *Contra*, Marsh *vs.* Marsh, 13 N. J. Eq., 281).

Few of the older women in the Philippine Islands are educated, and when the plaintiff stated that she knew of no other offenses committed by her husband, as the Spanish text will show, she meant that she did not know personally of his misconduct (Rec., 18, 19, and 91). But there is no logical reason why his offenses committed with these other women should not be taken into consideration, and a decree granted by reason of those acts in connection with those committed with the other woman.

The Supreme Court of the Philippine Islands attempts to justify a change in the findings of the trial court by quoting a page of the plaintiff's testimony (Rec., 89).

An examination of the record will show that the findings of the trial judge are based upon a preponderance of the evidence and that the change by the Supreme Court is based

upon a disconnected answer. There is no evidence to support the finding that for seven or eight years succeeding the year 1900 there was no suspension of conjugal life or any break in the harmony or that conciliation existed between both spouses (Rec., 90). There is no evidence to support the finding (Rec., 91) that plaintiff condoned all the acts of adultery committed by the defendant from 1868 to 1910, and even admitting that she agreed to condone those known to her it was not only implied, but expressly agreed, that the husband would treat her with conjugal kindness, which he failed to do, and treated her as a servant and committed also acts of impropriety, which revived all those former adulterous acts. When a man in the night frequents the house of his former concubine, with whom it is admitted he had children, it is quite sufficient to be a "dissipation that violates the conjugal felicity" (Rec., 93) of his wife.

The Supreme Court of the Philippine Islands in a way attempts to apply the articles of the Criminal Code to this action. This is purely a civil action and is governed by the Civil Code. No mention is made of the prescription of actions for divorce in title 18, chapter III of the Civil Code.

In the case of Cass *vs.* Cass, 34 L. A., 611, it is held that a renewal of acts of ill treatment or public defamation will renew and corroborate a new action. Generally the cases reported in ecclesiastical reports held the same way. The law applicable to this case is set out in the case of De la Rama, 3 P. I. Rep., 334, and is found in the Partidas. It is true that only spouses can exercise the action for divorce against each other, but this does not limit them to their personal knowledge of acts committed by the other. Either can call such witnesses as may be necessary to establish any allegations contained in the complaint. The Spanish Government derived their laws from the old papal decrees, and compiled and brought them down to date from various Latin sources, and published them as early as 1585 in what is known as Las Partidas. The ecclesiastical courts derive their laws from the same source, and a holding of those

courts is very applicable in the present case. Criminal as well as civil procedure, and also statutes governing prescription, were adopted in the Philippine Islands and are still in force, unless expressly repealed by some act of the Philippine Commission or legislature since American occupation. The Partidas provide for the procedure in conducting actions for a separation, but it is contended that none of this procedure is in force at the present time.

When the wife forgave the husband for the offenses which he had committed against the chastity of her home, it was upon express condition, which he violated and wholly disregarded from the time he brought his illegitimate children into her home until the beginning of this action. He failed to treat her with conjugal kindness. She could not bear to remain in the home and dwell with his illegitimate children and be treated as a servant; and from the year 1900 up to 1910, when this action was begun, only visited her home on rare occasions. The husband is now enjoying the company of his illegitimate children and his home, and visiting, as often as he desires, the homes of his concubines, while his wife is wandering about among her children who have married and are residing away. The fact that age and infirmity has made it impossible for the husband to commit the same offenses as he formerly did should not prevent the mother of his ten children, who is compelled to reside away from her home, from obtaining some of the benefits and enjoyment of the property which has accumulated to them. It is an erroneous decision that would compel her to live upon the charity of her children, apart from her husband and home, and allow him to make various trips to foreign countries in company with his illegitimate children and to enjoy their society in the conjugal home. The fact that the wife has been rather tardy in bringing this action is no reason why she should be compelled to longer submit to the indignities placed upon her by her husband. It takes a lot of nerve for a woman in a Catholic country to break up her home and commence a litigation against her husband for

a separation and division of their property. The sanctity of the home is far greater among the Spanish people than it is among the English. Must this woman continue to suffer the indignity placed upon her by the acts of her husband and submit to the companiation of him and his illegitimate children in her home should she decide to return to it or be denied all relief in this action?

It is, therefore, respectfully submitted that the Supreme Court of the Philippine Islands seriously erred in denying this woman a decree.

VIII AND IX.

The Supreme Court of the Philippine Islands erred in holding that the findings of fact supported the judgment rendered by the trial court herein.

The Supreme Court of the Philippine Islands erred in denying the appellant's motion for a rehearing.

These assignments of error are supported by the foregoing arguments. Therefore the appellant respectfully submits that the decision of the Supreme Court of the Philippine Islands should be reversed and that she be granted a decree of separation and a division of the community property with costs.

C. W. O'BRIEN,
Manila, P. I.,
Attorney for Plaintiff and Appellant.

FILED
NOV 13 1915
JAMES D. MAHER
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 191[illegible]

No. 352 65

TEODORA ARAN DE VILLANUAVA, APPELLANT,
vs.
MARIANO P. VILLANUEVA.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

APPELLANTS ADDITIONAL MEMORANDUM.

Credibility of party charged with adultery.

Harrington *vs.* Harrington, 116 Mass., 761.
Stickle *vs.* Stickle, 48 N. J. Eq., 336.
Whitenack *vs.* Whitenack, 36 N. J. Eq., 474.
Astley *vs.* Astley, 1 Hagg. Ecc., 714, 720, 721.

DELAY, CONDONATION AND REVIVAL.

Armstrong *vs.* Armstrong, 32 Miss., 279.
Guthrie *vs.* Guthrie, 26 Mo. app., 566.
Ferrers *vs.* Ferrers, 1 Hagg. Con., 130.
Wessels *vs.* Wessels, 28 Ill. app., 253.
Farnham *vs.* Farnham, 73 Ill., 497.
Sharp *vs.* Sharp, 116, Ill., 509
Duberstein *vs.* Duberstein, 171 Ill., 133.
Todd *vs.* Todd, N. J. Eq. 1897 att. Rep. 766.
Sections 312, 319, and 320, Bishop on M. & D., Vol. 2.
Diaz *vs.* Torrez, 17 Porto Rico, 476.
Durant *vs.* Durant, 1 Hagg, Ecc., 733.
D'Aguilar *vs.* D'Aguilar, 1 Hagg. Ecc., 773.

Williard's Notes on the Spanish Civil Code, p. 14 to p. 20.

See Weyler's order leaving in force former legislation for Titles (civil not criminal) hereby suspended.

JURISDICTION.

Rector *vs.* Lipscomb, 141 U. S., 557.
Micas *vs.* Williams, 104 U. S., 556, Sec. 10 Act of Cong., July 1, 1902.
De la Rama *vs.* De la Rama, 201 U. S., 303.

REEXAMINATION OF FACTS.

Beyer *vs.* Lefevre, 186 U. S., 114, and cases cited in De la Rama supra.

THE PARTIDAS.

Separation for adultery is provided for in Book 4, Title 2, Law 3; Jurisdiction, in the Ecclesiastical Court, Book 1, Title 6, Law 58; also Title. 10, Law 1, and Title 9, Law 2, and is now conferred on the civil court by Act 136, Sec. 56, of the Philippines. Book 4, Title 9, Law 9, mentions the two ways in which accusations may be made in order to "departir el matramonio," i. e., an action in the Ecc. Court and one for punishment in the Lay Court; Title 10, Law 1, defines divorce; Title 10, Law 6, provides for a waiver even after judgment has been given; Laws 15 to 20 provide for witnesses; Law 6 of this Title and Book mentions several defenses on the part of the wife, among which is pardon or condonation, but nothing is said about these applying to the husband, although Title 9, Law 2, provides for the accusation by either against the other.

Ecclesiastical courts have no authority to execute on property without the intervention of the lay court. Novisima Recopilacion, Book 2, Title 1. Under "Divorcio" in the index to the Partidas 4 Vol. 50, no mention is made of prescription or of Book Seven, the criminal law.

Criminal Law Book 7 of the Partidas.

Title 17 Law 1 of this Book defines adultery;

Title 17 Law 4 fixes the limitation for accusations for adultery at 5 years, but if done by force at 30 years; Title 17 Law

15 states the penalties; and other titles and laws of this book treat of crimes, witnesses, procedure, etc., *all in the Lay Court;* Title 17 Law 13 permits the husband to charge the wife in the Lay court, but not the wife, the husband.

ON ERRONEOUS FINDINGS.

Children entered home "in successive years."—Decision, p. 89, at end of first paragraph. This is contrary to evidence on p. 20, above the middle, and at the bottom of p. 25 and top of pp. 26 and 29.

That the daughter by another woman entered the conjugal home with the consent of the wife, bore husband's name and was treated publicly or otherwise same as legitimate children (p. 90, middle of page), is contrary to the evidence on top of p. 15; bottom of p. 28 and top of p. 29; top of p. 41; and below middle of p. 57. "That the wife continued to reside in the conjugal domicile until a little more than a year prior to filing her complaint," Decision p. 90, paragraph 3, is contrary to trial court's findings at bottom of p. 75 and top of p. 76, and the evidence near the bottom of pp. 15 and 20, below middle of p. 18 and above the middle of p. 19, and in the same paragraph, the finding, "It is true that during the seven or eight succeeding years there was no suspension of the conjugal life, or any break in the harmony or at least conciliation existing between both spouses," is absolutely contrary to all the evidence, see p. 18 entire; above the middle of p. 19; toward the bottom of p. 20; top pp. 21 and 29; and bottom of p. 41.

Last paragraph Decision p. 91, applying Partida 7, and the judicial principle, etc., of Penal Code, and stating reasons why lower court dismissed action is legally wrong and incorrect in fact. The criminal law is inapplicable and the trial court only found pardon up to 1900, not up to 1908,—top p. 76; error re daughter by second woman previously cited.

Last sentence on p. 92 and top of p. 93 is very erroneous as shown by previous citations. This daughter, as trial court found, paragraph 5, p. 75, that mother died after American

occupation, and at time of trial was not living in conjugal home, did not come into the home until about 1903, see top of pp. 29 and 41. When the plaintiff returned to visit her only single daughter, "she never entered their room; they did not invite her to eat nor did she sit down to the table" (p. 41, bottom). "My husband and I never spoke, although we were at the table" (p. 18, first answer). "I could not have my way in the house; I lived in it as though I was a servant" (p. 18 at the bottom).

The third (3) finding and conclusion of the trial court, p. 74, and the appellant's concurrence therein on p. 93 is contrary to the evidence. In 1902, on her return from Virac to Tobaco, p. 14, the wife says, "I found they again resumed their relations, also left house, "on acount of this woman." Maria Lopez testifies, p. 31, that in the last 5 or 6 years previous to the trial, "He only went there occasionally," "at sundown;" "left Florencia's house in her company," bottom of p. 32; "I have seen him leaving the house very early, when it was still dark," p 33, above middle. After Americans' occupation, when defendant returned to Tobaco, Bernabe Ranches, an employee, testifies, that defendant went to Florencia's house "after eight o'clock"—"one night," bottom of p. 35, saw him visit Quiteria Buenconsejo's house, top of p. 36. Another witness, top of p. 37, testifies to seeing defendant in house of Florencia at 8 A. M., alone with her; also witness on middle of page 84 states that defendant's relations with Quiteria Buenconsejo continued until 1904.

Respectfully submitted, by permission of this Honorable Court.

C. W. O'BRIEN,
Attorney for Appellant.

Washington, D. C., November 10, 1915.

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Supreme Court of the United States,

OCTOBER TERM.

No. 65.

TEODORA ARANA DE VILLANUEVA,
Appellant,

vs.

MARIANO P. VILLANUEVA.

BRIEF FOR APPELLEE.

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Supreme Court of the United States,

OCTOBER TERM

No. 65.

TEODORA ARANA DE VILLANUEVA
Appellant

vs.

MARIANO P. VILLANUEVA

BRIEF FOR APPELLEE

Statement

This is an appeal from a judgment of the Supreme Court of the Philippine Islands entered on March 17th, 1913, unanimously affirming a judgment of the Court of First Instance of Albay dated May 9th, 1911, dismissing the complaint herein. The action was brought by the appellant as plaintiff for a divorce from her husband, the appellee, on the ground of adultery, and for a liquidation of the property belonging to the conjugal partnership. The answer was a general denial. The defendant further pleaded condonation and prescription. In regard to the conjugal property, the plaintiff alleged that its "value

amounts to a considerable sum calculated at 300,000 pesos" (Rec. p. 4). This allegation was included in defendant's general denial and the defendant also pleaded that he was involved in litigation "which if decided against him will amount to a sum in excess of all his property" (Rec. p. 6).

The facts are fully set forth in the opinion of the Trial Court (Rec. pp. 72-77) and of Mr. Chief Justice Arellano of the Philippine Supreme Court (Rec. pp. 88-93). The appellant does not seriously question the correctness of the Court's findings on any of the essential facts of the case.

The most significant facts are as follows: The plaintiff (appellant) and defendant were married on July 11, 1867. The defendant was then 26 years old. He was at the time *in articulo mortis*, and the marriage was performed for the express purpose of legitimatizing issue (see marriage certificate, Rec. p. 78). The couple had eleven children, nine of whom are living, and who are all adult (Rec. p. 88). The defendant, whose vigor appears to have been physical rather than moral, wandered from the paths of domestic virtue at a very early stage of his married life. With the evident knowledge and toleration of his wife, he proceeded to raise several sets of illegitimate children, some of whom he brought up together with the children whom his marriage to the plaintiff had been made to legitimatize.

From 1868 to 1900, he openly maintained relations with one Florencia Quijano, by whom he had five children. The Court found that there was no proof of any acts of adultery with this woman after 1900, and that from that date defendant was incapable of sexual intercourse (Rec.

pp. 74, 75, 93). The plaintiff knew of these relations with Florencia, but, as she herself testified, "put up with them so as not to cause a public scandal" (Rec. p. 12). These offences were thus expressly condoned and the condonation was further evidenced by the fact that the children of this union were brought up under the family name and in the conjugal home (Rec. p. 90).

The Trial Court found that prior to 1900 the defendant also maintained relations with one Quiteria Buenconsejo, and at about the same time with one Vicenta Buenaflor, by both of whom he had children, but, as pointed out by the Philippine Supreme Court, any cause of action which may have been alleged on account of these offences was expressly eliminated by the plaintiff herself upon the trial, when she testified that she brought the suit solely on account of defendant's acts of adultery with Florencia Quijano (Rec. p. 91, also pp. 18-20).

The plaintiff and defendant continued to live together as man and wife until 1909, nine years after the latest date of any acts of adultery of which there is any evidence (Rec. pp. 74, 90), thus completing the condonation and permitting prescription to run against all the causes of action alleged.

Upon these facts the Trial Court properly dismissed the complaint, and the Philippine Supreme Court affirmed it both on the law and on the facts.

Brief of the Argument.

1. It is not shown that the jurisdictional amount is involved and this Court has therefore no jurisdiction.

2. This Court will follow the Courts below on questions of local law and will not review the concurrent findings of fact of the Courts below unless they are manifestly contrary to the evidence. In this case the findings were amply supported by the evidence.

3. The plaintiff had condoned the offences of which she complains.

4. Plaintiff's cause of action, if any, was long since barred by prescription.

POINTS.

I.

It is not shown that the jurisdictional amount is involved, and this Court has therefore no jurisdiction.

The appellant seeks to found the jurisdiction of this Court upon the amount claimed to be involved, but fails to make any sufficient proof of it. The complaint alleges that the value of conjugal property "amounts to a considerable sum, calculated at 300,000 pesos," and that its income is 18,000 pesos (Rec., p. 4). This was denied (Rec., p. 6). The complaint demands a partition and the adjudication to plaintiff of her share (Rec., p. 5), but states no facts from which the amount of her share can be estimated.

The only evidence on the subject of the amount of defendant's property was plaintiff's own testimony that the properties in Tabaco were large,

and "worth more than 20,000 pesos" (Rec., p. 15). The Court made no finding whatever on the subject. The affidavit of appellant (Rec., p. 101), submitted with the petition of appeal, simply follows the language of the statute, and is a mere conclusion. It does not show that she has any knowledge in regard to what property is involved, or is qualified to appraise its value. The defendant's uncontradicted testimony (Rec., p. 64) shows that he is burdened with various liabilities which will reduce the net amount of the conjugal property, and may wipe it out altogether.

For this Court to take jurisdiction of an appeal from a decree of the Philippine Supreme Court refusing a divorce, it must appear that the defeated party thereby loses an interest in the conjugal property, or an amount of alimony, in excess of $25,000. In de la Rama *v.* de la Rama, 201 U. S. 303, this appeared by the finding of the Trial Court. In this case it appears nowhere, except by plaintiff's perfunctory affidavit.

The burden of showing jurisdiction is on the appellant, and she must establish the jurisdictional facts "by a fair preponderance of testimony."

> See Wilson *v.* Blair, 119 U. S. 387.
> Johnson *v.* Wilkins, 116 U. S. 392.

Here there is a naked assertion and a flat denial, and no evidence on the trial of any value beyond 20,000 pesos.

While in some cases "where judgment goes for the defendant, the amount of the plaintiff's claim is the test of jurisdiction," nevertheless it must appear that the claim is made in good faith and upon substantial grounds.

> See Gorman *v.* Havird, 141 U. S. 206.

Here there is nothing before the Court from which the conclusion can be drawn that, if the conjugal property were partitioned, plaintiff's share would be in excess of $25,000 or any other sum. In her complaint plaintiff admits her inability even to describe the defendant's property (Rec., p. 4), and her testimony was so vague as to be valueless. The defendant testified as to his liabilities, but was not cross examined as to his resources.

The jurisdiction of this Court cannot be founded on mere conjecture, or on the appellant's unsupported and controverted assertion of a conclusion. In this case there is nothing more and the appeal should accordingly be dismissed for want of jurisdiction.

II.

(A.) This Court will follow the Courts below on questions of local law, and (B) will not review the concurrent findings of fact of the Courts below unless they are manifestly contrary to the evidence. In this case the findings were amply supported by the evidence.

(A.) The law governing divorce in the Philippines is the old Spanish law of the Partidas. How these ancient statutes are to be construed and applied is a question of local law, upon which this

Court customarily follows the ruling of the local Courts, unless they are "clearly wrong."

See Santa Fe Railway *vs.* Friday, 232 U. S., 694, at 700.
Nadal *vs.* May, 233 U. S. 447, at 454.
Ker *vs.* Couden, 223 U. S. 268, at 279.

In the case at bar, not one local or Spanish authority is cited against the rulings of the Courts below.

(B.) This Court will ~~even~~ also accept the findings of fact in which both Courts below have concurred, unless they are "clearly erroneous."

See Dun *vs.* Lumberman's Credit Assn., 209 U. S. 20, 24.
Shappirio *vs.* Goldberg, 192 U. S. 232, 240.

In the case at bar there was little or no real conflict of evidence. The defendant's adultery with Florencia Quijano and others prior to 1900 was proved, but the only evidence tending to show any offenses after that date was wholly insufficient to outweigh the evidence of sexual incapacity from and after 1900.

The appellant seeks to suggest a discrepancy between the rulings of the Trial Court and of the Philippine Supreme Court in regard to the date of the definite rupture between plaintiff and defendant, but there is none. The Trial Court found that the parties lived together as man and wife until 1909 (Rec. p. 74) and the Philippine Supreme Court found to the same effect (Rec. p. 90). The reference in Appellant's Brief (p. 3) to plaintiff's absence from the conjugal abode after 1900 is misleading. The Trial Court did not *find* that

the parties had not lived maritally for ten years, but merely stated that the plaintiff so testified (Rec. p. 75). The evidence showed actual cohabitation as late as January, 1910 (Rec. pp. 48, 49), and both Courts correctly held that this was sufficient, irrespective of the continuance of sexual intercourse.

Condonation is a fact, both Courts have found this fact upon amply sufficient evidence, and this Court should not be asked to reverse them upon mere inference or hypothesis.

III.

The plaintiff has condoned the offences of which she complains.

As pointed out by Mr. Chief Justice Arellano, it is sufficient to constitute condonation that the spouses "continued to live together in the same house" (Rec. p. 91). Part. 7, Tit. 17, Law 8, cited by the Court below, expressly provides that such continued cohabitation is sufficient evidence of forgiveness.

The evidence showed, and both Courts found, that the parties continued to live together until 1909. The latest acts of adultery of which there was any evidence were committed in or before 1900. The plaintiff does not even claim to have left her husband until 1902 (Rec. p. 3). Thus in any view of the case, condonation by cohabitation was fully established.

The numerous cases cited by appellant, in regard to conditional condonation, all arose in other

jurisdictions, under a different system of law, a different civilization and different moral standards. They are of no weight as against the conclusions of the Courts below concerning the law as actually in force in the Philippines.

The appellant argues that plaintiff did not know of the adulteries with Quiteria Buenconsejo and Vicenta Buenaflor and therefore could not have condoned them, but these, although found as facts by the Trial Court, were eliminated by the plaintiff herself (Rec. pp. 18, 19, 20), were held insufficient as grounds for a divorce by the Trial Court (Rec. p. 75), and were in effect stricken from the Record by the Philippine Supreme Court (Rec. p. 91). In any event these offences were barred by prescription, as will be shown in the next Point.

IV.

Plaintiff's cause of action, if any, was long since barred by prescription.

Part. 7, Tit. 17, Law 7, cited by the Court below, makes it a complete defence to a suit for divorce on the ground of adultery "that the adultery, of which complaint is made, was committed five years before the accusation is brought."

The bar takes effect, not five years from discovery, but five years from the fact itself.

Whatever right of action the plaintiff may have had must have ~~occurred~~ accrued prior to the enactment

of the Philippine Code of Civil Procedure, which took effect on September 1st, 1901. Such Code therefore does not apply (see §38), and the case is necessarily governed by the former Spanish law, as held by the Courts below. The acts of adultery of which there was any evidence were all in or prior to 1900 (Rec. pp. 74, 75), and the plaintiff waited *ten* years before bringing her action.

The provisions of the Civil Code relating to marriage and divorce (Title IV) are not applicable in the Philippine Islands (See Benedicto *vs.* de la Rama, 3 Phil. Rep. 34, 36-38). The right of action depending wholly on the ancient law, the bar of the ancient law necessarily applies also, and it is quite immaterial whether or not the Civil Code, as claimed by appellant, provides "no law of prescription for separation" (Applt's Brief, p. 10).

This absolute defense applies to the adulteries with Quiteria Buenconsejo and Vicenta Buenaflor, so that even if they are to be deemed open to consideration here, and not condoned, they are still of no avail to plaintiff.

It is manifestly in the interest of public decency that divorces should not be granted for long past offences, and that ancient scandals should be buried in oblivion. It is unnecessary in this case to defend or excuse the moral divagations of defendant, whether in his hot youth or his vigorous middle age. The Courts below were right in refusing to disrupt a marriage of over forty years standing on the ground of offences committed by the husband (now incapable of further offence) ten years before the suit was brought, and condoned by the wife by continued cohabitation for many years.

CONCLUSION.

The appeal should be dismissed for want of jurisdiction, or the judgment below affirmed.

Respectfully submitted this 8th day of November, 1915.

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Supreme Court of the United States,

OCTOBER TERM, 1915.

No. 65.

TEODORA ARANA DE VILLANUEVA,
Appellant,

vs.

MARIANO P. VILLANUEVA.

MEMORANDUM FOR APPELLEE IN REPLY TO APPELLANT'S ADDITIONAL MEMORANDUM.

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Supreme Court of the United States.

OCTOBER TERM 1915.

No. 65.

TEODORA ARANA DE VILLANUEVA,
Appellant,

vs.

MARIANO P. VILLANUEVA.

Memorandum for Appellee in Reply to Appellant's Additional Memorandum.

The additional Memorandum submitted by Appellant by leave of Court has taken a somewhat wider range than counsel for the Appellee understood was contemplated. According to counsel's recollection of the colloquy on the subject, such additional Memorandum was to be directed entirely to the question of the applicability and effect of certain provisions of the ancient Spanish Law referred to by the Courts below. Since the Appellant's counsel has discussed other subjects also, Appellee's counsel deems it proper to reply briefly to Appellant's contentions in regard thereto.

I.—*Review of Facts.* Among the latest decisions of this Court to the effect that it will not review the concurrent findings of the two lower Courts "unless shown to be clearly erroneous" are the following:

Tex. & Pac. Ry. Co. *vs.* La. R. R. Com., 232 U. S. 338, 339;
Washington Sec. Co., *vs.* United States, 234 U. S. 76, 78;
Gilson *vs.* United States, 234 U. S. 380, 384.

Where there is evidence *tending to sustain* the findings of the Courts below, this is sufficient, and this Court will not weigh the comparative credibility of witnesses or review the conclusions drawn below from conflicting testimony.

In the case at bar there is evidence to sustain all of the findings made below and it is of no consequence that there was also some conflicting testimony given by or on behalf of the plaintiff. Moreover, the nature of the case is such as not to invite any unnecessary re-examination of the facts.

II.—*Jurisdiction.* The additional cases cited by Appellant's counsel do not sustain his contention that the mere affidavit of the Appellant stating, not facts, but a conclusion, is sufficient to show that the jurisdictional amount is involved. The rule is that upon the whole Record the jurisdictional value must be "made out by a preponderance of evidence."

See Red River Cattle Co. *vs.* Needham, 137 U. S. 632, 636.

The affidavit of a party which simply follows the language of the statute, without stating specific facts, is not sufficient.

> See Enriquez *vs.* Enriquez, 222 U. S. 123, 126;
> Enriquez *vs.* Enriquez, No. 2, 222 U. S. 127, 128.

The statute providing for the review of judgments of Territorial Supreme Courts contains the same provision in regard to the ascertainment of the jurisdictional amount, "by oath of either party or of other competent witnesses," as does the statute providing for the review of judgments of the Supreme Court of the Philippine Islands.

> See U. S. Rev. Stat. § 702; and 32 U. S. Stat., pp. 691, 695.

The decisions of this Court in regard to the manner in which the jurisdictional amount must be shown upon appeals from Territorial Supreme Courts are therefore equally applicable to appeals from the Supreme Court of the Philippine Islands.

III.—*Applicability of the Partidas.* As was demonstrated by the Philippine Supreme Court in Benedicto *vs.* de la Rama, 3 Phil. Rep. 34, the Partidas furnish the only divorce law which can be regarded as being in effect in the Philippine Islands. There has apparently been no legislation whatever on the subject since the American occupation. Act 136, § 56, of the Philippine Commission, referred to in Appellant's Additional Memorandum, is merely that Section of the Philippine Code of Civil Procedure which provides that

"Courts of First Instance shall have original "jurisdiction:

"(a) In all civil actions in which the sub- "ject of litigation is not capable of pecuniary "estimation."

Under this provision the Courts of First Instance in the Philippine Islands have taken jurisdiction of suits for divorce, but the only law on the subject which they can apply is the law of the Partidas.

By the Partidas, condonation is expressly made a defense both to proceedings in the Ecclesiastical Courts (see 4th Partida, Tit. 9, Law 6), and to proceedings in the Lay Courts (see 7th Partida, Tit. 17, Law 8).

It is evident from the entire text of the ancient law that while suits by the wife against the husband were permitted, they were not encouraged, and it is not conceivable that any defense expressly made available to the wife if sued by the husband should not be equally available to the husband if sued by the wife.

The five year bar is expressly provided for by the 7th Partida, Tit. 17, Laws 3 and 7. It is true that the 7th Partida deals primarily with the punishment of offenses by the Lay Courts. It does not, however, expressly prescribe or limit the relief which may be granted by the Lay Courts in proceedings involving matrimonial offenses and it is to be noted that such proceedings may be brought in the Lay Courts by the injured spouse. Moreover, even if it be assumed that jurisdiction to decree a separation was vested exclusively in the Ecclesiastical Courts, nevertheless, it would be both natural and proper for such Courts to apply the same bar as that expressly provided for

in respect to proceedings in the Lay Courts, just as Courts of Equity apply *legal* statutes of limitation.

In any event, these questions, concerning the manner in which the ancient Spanish law governing domestic relations is to be applied in the Philippines, and the length of time sufficient to bar recourse to any remedies provided for thereby, are peculiarly within the judicial knowledge of the highest Court of the Philippine Islands, the members of which are familiar with local social conditions and requirements.

CONCLUSION.

The judgment appealed from should be affirmed.

Respectfully submitted, by leave of Court, this 15th day of November, 1915.

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DE VILLANUEVA *v.* VILLANUEVA.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 65. Argued November 9, 1915.—Decided December 6, 1915.

The court has jurisdiction to review the judgment of the Supreme Court of the Philippine Islands in an action for divorce, where the affidavits supporting the appeal show, without contradiction, that the value of the community property involved is of the jurisdictional amount. *De la Rama* v. *De la Rama*, 201 U. S. 303.

Even where this court may review findings of fact, as in appeals from the Supreme Court of the Philippine Islands in cases involving the statutory amount in controversy, it will not reverse findings when made by both courts below in the absence of conviction of clear error.

In appeals from the territorial courts this court follows and sustains the application of the local law to the facts as made by the courts below, unless constrained to the contrary by a sense of clear error committed.

A judgment of the Supreme Court of the Philippine Islands, affirming the court of first instance in rejecting complainant's demand for divorce, affirmed by this court in the absence of conviction of clear error of the courts below either in the findings of fact or the application of the local law to the facts as found.

THE facts which involve the jurisdiction of this court of appeals from the Supreme Court of the Philippine Islands and the validity of a judgment of that court rejecting the demand of a wife for divorce from her husband, are stated in the opinion.

Mr. C. W. O'Brien for appellant.

Mr. Howard Thayer Kingsbury, with whom *Mr. Frederic R. Coudert* was on the brief, for appellee.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

The decree which the appellant seeks to reverse affirmed one rendered by the court of first instance rejecting her demand for a divorce from her husband and for a liquidation and partition of the property belonging to the legal community which existed between them. At the outset we say that we think there is no foundation for the suggestion that we are without jurisdiction because of the inadequacy of the amount involved, since the complaint by which the suit was begun alleged the existence of such an amount of community property as to give jurisdiction, and because the affidavit filed for the purpose of the appeal also so establishes, there being no countervailing affidavit and nothing in the record to demonstrate to the contrary. *De la Rama* v. *De la Rama*, 201 U. S. 303.

The complaint for divorce and liquidation of the community as it was finally amended, which was filed in 1910, alleged the marriage of the parties in 1867 and the birth of ten children, nine of whom were alive and of age and one of whom was dead leaving surviving issue. As a basis for the divorce prayed various acts of adultery by the defendant were charged extending over a period of forty-two years, that is, from 1868, shortly after the marriage, until the bringing of the suit in 1910. The acts thus charged embraced six periods: the first, from 1868 until the filing of the suit with a named person, from which relation it was alleged there had been begotten five children, four of whom were alive and bore their father's surname; the second, with another named person during 1889 and 1890, from which relation there was begotten a daughter who likewise bore her father's surname; the third, with a named person during the year 1891; the fourth, with a named person from 1892 until the time the

suit was commenced, from which relation it was alleged children also were begotten; the fifth, with a named person during the years 1901 and 1902; and the sixth, with a named person during the years 1903 and 1904. The answer set up a general denial, a special defense that if the acts of adultery alleged were found to have been committed, they were done with the knowledge of the complainant who had condoned them, and moreover that the action was prescribed.

After full hearing the court of first instance found that the defendant had been guilty of adultery with the person named in the complaint in the first period during the years from 1868 until 1900, but that there was no proof of any such adultery having been committed by him with the person named for the ten years preceding the suit, that is, from 1900 to 1910. The court also found that it was established that the defendant had adulterous relations with the person named during the second period, that is, from 1889 to 1890, and that from such relations, as alleged, a daughter named Maria was begotten, but that the relations had ceased years before the bringing of the suit since the woman named had died long before at a period fixed approximately as the time of the beginning of the American occupation of the islands. The court also found that it had been proved that acts of adultery had been committed with the person named during the fourth period, that is, in 1892 and some time thereafter, but it also affirmatively found that all relations between the defendant and the person named in this period had ceased prior to 1900. It was moreover expressly found that there was no proof whatever offered concerning any of the other acts of adultery charged in the complaint.

Concerning the first period the court found that the proof left no doubt that the complainant at an early date became aware of the adulterous relations to which that

period related and although she did so, continued her marital relations with her husband and had condoned his infidelity. Indeed, it was found that forgiveness by the wife was clearly established from the fact that during the ten years which had elapsed before the bringing of the suit and after the illicit relations had ceased, the children begotten of such relation were brought into the household with the consent of the wife and lived as part of the common family. Applying the law to this condition it was held that the condonement or forgiveness was a complete bar to the suit based upon the acts which had been thus forgiven. So far as concerned the acts of infidelity committed during the second and fourth periods as stated, although it was found that there was no direct proof that the complainant knew of such wrongs when committed, nevertheless it was held that there was no ground for awarding relief because of such acts irrespective of the question of forgiveness or condonement resulting from the long continuance of the marital relations after such acts had been committed, for the reason that the complainant had expressly declared in testifying that she solely asked relief because of the acts embraced in the first period and none other—a situation which, it was held, brought the case directly within the control of Laws 1 and 2, title 9, Partida 4, expressly confining the right to complain of adultery by one of the parties to a marriage to the injured party. And this conclusion was sustained by pointing out that although the complaint for divorce had been sworn to by the complainant, she had in her testimony admitted that she knew nothing of the particular acts embraced in the periods in question and intended only to sue for those described in the first period, thus as to such other acts giving rise to the implication that their averment was the result of the instigation of some person not authorized to act, probably impelled by some interest direct or indirect in the liquidation of

the community property which would follow if the prayer of the complainant had been granted.

In a careful opinion the court below, reviewing the action of the court of first instance, adopted and reaffirmed in every substantial particular the facts found by that court and also agreed with the legal conclusions which the court had applied to the facts by it found. In applying the law to the facts it was pointed out that the controlling law was to be found not in the civil code, but in the Partidas, and it was held that as by provisions of the Partidas which were cited it was expressly provided that condonement or forgiveness of acts of adultery excluded the subsequent right to relief based upon the fact that they had been committed, it followed from the conclusive proof of forgiveness resulting from the facts found that no error had been committed in rejecting the demand for a divorce. In stating the reasons which led it to this conclusion the mind of the court was principally directed to the acts of infidelity found to have been committed during the first period and the acts by which forgiveness as to them had been indubitably established. But the court, considering the facts found as to the other two periods, without deciding that such acts of infidelity had not been condoned, expressly held that the necessary result of the provisions of the Partidas which had been applied by the lower court exclusively confining the right to relief for acts of infidelity to the injured spouse, plainly justified the court of first instance in its ruling that the disclaimer of all right to relief as to any acts but those which the complaint alleged were committed during the first period excluded all right to recover for any but those acts to which the controversy thus became confined.

The first two of the nine assignments of error question the finding and ruling of the court concerning the acts committed during the first period and their condonement or forgiveness. The third and fourth assail the correct-

ness of the conclusion concerning the second and fourth periods and the ruling of the court relating to them based on the disclaimer made by the complainant in her testimony of any right to relief on account of them; and as cognate to this subject, the fifth complains of the action of the court in analyzing the motives which prompted the inclusion in the suit of causes upon which the complainant asserted she did not rely for relief for the purpose of bringing the case within the rule laid down in Laws 1 and 2, title 9, Partida 4, which both courts applied. The remainder in general terms but assert error committed in the findings and in the law which was applied to them in deciding the cause.

Although the arguments pressed at bar to sustain these assignments apparently enlarge them, in substance they add nothing to them but simply reiterate in changed and more minute forms of statement the grounds of error asserted in the assignments. Under these conditions it is apparent that all the errors relied upon, whether embraced in the assignments or pressed in the argument, considered in their essence only dispute the correctness of the facts found by both the courts below and but challenge the accuracy of the principles of the local law which were applied to the facts for the purpose of deciding the cause. Under these circumstances, without noticing more in detail either the assignments or the arguments supporting them, we content ourselves with saying that we are of the opinion after examining and weighing them all, that they are without merit for the following reasons: (a) Because in so far as they dispute the concurrent findings of fact of both the courts below they entirely fail to give rise to that conviction of clear error which must be entertained in order to authorize a reversal of the findings, *Texas & Pacific Ry.* v. *Louisiana R. R. Commission*, 232 U. S. 338; *Gilson* v. *United States*, 234 U. S. 380, 383–384; and (b) Because in so far as they challenge the correctness of the

application which the courts made of the local law to the facts in deciding the cause, they are totally deficient in that persuasive strength which it is essential they should possess in order to produce the conviction that clear error was committed by the court below, and thus lead us to depart from the principle by which we follow and sustain the local law as applied by the court below unless we are constrained to the contrary by a sense of clear error committed. *Ker* v. *Couden*, 223 U. S. 268, 279; *Santa Fe Ry.* v. *Friday*, 232 U. S. 694, 700; *Nadal* v. *May*, 233 U. S. 447.

Affirmed.